

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No. 76-4251

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner,

v.

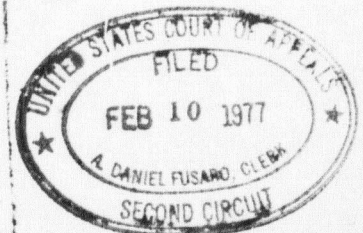
DEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D. C. 20570.



PAGINATION AS IN ORIGINAL COPY

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Deven Lithographers, Inc. and
Cavalier Multicolor Corp.
Board Case No. 29-CA-4555

8.12.74	Petition filed
8.27.74	Stipulation for Certification upon consent Election
9.23.74	Certification on Conduct of Election dated
9.23.74	Tally of Ballots dated
9.27.74	Employers objections to election dated
1. 9.75	Regional Director's Report on Objections dated
1.17.75	Motion for Reconsideration and for Hearing dated
1.24.75	Order denying Motion for Reconsideration and for Hearing dated
2. 1.75	Employer's Exceptions to Regional Director's Report and Recommendations and to Regional Director's Order Denying Motion for Reconsiderations and for Hearing dated
2. 1.75	Brief on behalf of employer in support of Exceptions dated
6. 6.75	Decision and Certification of Representative dated
9. 4.75	Original Charge filed
10.31.75	Complaint and Notice of Hearing dated
11.11.75	Respondent's Answer
1. 8.76	Hearing Opened
1. 9.76	Hearing Closed
3.24.76	Administrative Law Judge's Decision issued
4.19.76	General Counsel's Exceptions to the Administrative Law Judge's Decision received
6.10.76	Decision and Order of the National Labor Relations Board dated

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

DEVEN LITHOGRAPHERS, INC., AND
CAVALIER MULTICOLOR CORP.

and

Case 29-CA-4555

LOCAL ONE, AMALGAMATED
LITHOGRAPHERS OF AMERICA

G. Peter Clark, Esq., for the
General Counsel.
Hugh P. Husband, Jr., Esq., of
Bridgehampton, NY, for the
Respondents.
Frank J. Casino, Jr., of New York,
NY, for the Charging Party.

DECISION

Statement of the Case

MELVIN J. WELLES, Administrative Law Judge: This case was heard at Brooklyn, New York, on January 8 and 9, 1976, based on charges filed September 4, 1975, and a complaint issued October 31, 1975, alleging that Respondent violated Section 8(a)(1), (3) and (5) of the Act. Respondents have filed a brief.

Upon the entire record in the case, including my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Employer and the Labor Organization Involved

5 Deven Lithographers, Inc., and Cavalier Multicolor Corp. hereafter called the Company or Respondent, are, as Respondent admits, New York corporations, engaged in the manufacture and sale of printing materials and related products at their locations in Long Island City and Brooklyn, New York. During the year preceding issuance of the
10 instant complaint, they received goods and materials at these locations valued in excess of \$50,000 of which goods and materials, more than \$50,000 worth were shipped to them from points outside the State of New York. I find, as Respondent concedes, that Deven and Cavalier
15 constitute a single employer, and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Local One, Amalgamated Lithographers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Facts - Refusal to Bargain

25 On September 23, 1974, the Union received a majority of the votes in an election conducted by the Board among the Employer's employees. Thereafter, on June 6, 1975, the Board certified the Union as the exclusive bargaining representative of those employees, having adopted the Regional Director's determination that the Employer's
30 Objections to the Election be overruled. On June 10, 1975, Union Representative Frank J. Casino, Jr., called the plant for the purpose of requesting bargaining by the Union with the Employer. He was unable to speak with Edward Gambella, Company president then, or during the next week or so, despite repeated phone calls. On June 19, Gambella returned Casino's call and told him, according to Casino, that he could
35 not talk about anything until he spoke with his attorney. Casino attempted to call Gambella another four or so times between June 19 and August 11, with no success. On August 14, he spoke again with Gambella, who told Casino "I thought I told you to contact my attorney." Casino said that he thought Gambella was to have contacted his attorney, but
40 that in any event he, Casino, would now do so. Casino, after several fruitless attempts to do so, reached Company attorney Husband on August 25, and was told by Husband that Gambella wanted to go into further litigation on the matter. The parties stipulated at the hearing that Respondent refused to bargain with the Union, and intended to
45 litigate further the validity of the certification issued by the Board.

4

B. Discussion - Refusal to Bargain

Respondent's objections to the election having been overruled by the Regional Director, with the Regional Director's determination affirmed by the Board, it is, of course, incumbent upon me to find the refusal to bargain violation and issue an appropriate order. Respondent, indeed, does not challenge the fact that it refused to bargain in order to test the certification. Although Respondent in its brief requests dismissal of the 8(a)(5) allegation on the ground that there was no valid certification, the forum for asserting such a claim, other than merely to preserve its position, as it has, is not before me.

The General Counsel also contends that Respondent, prior to its ultimate "refusal to bargain" to test the certification, engaged in attempts to evade and delay its obligation to bargain with the Union, and that this delay constituted a separate and distinct violation of Section 8(a)(5) of the Act. The evidence presented does not convince me that the 2 1/2 month period between the certification and Respondent's refusal was itself occasioned by any "bad faith," or purpose of evasion, on Respondent's part. But even if it had been, I see no useful purpose to be served by so concluding, since at this point a bargaining order, including a provision for extending the "certification year," is all that could be given by way of remedy whether the violation was solely the refusal to bargain in order to test the certification, or included any "bad faith" delay or evasion prior thereto.

C. The Facts - Alleged Discriminatory

Henry Aleksiewicz started working for the Company about 9 years ago. From about 1972 until about January 1975, he was in charge of a portion of the Company called "Cavalier," about 5 minutes drive from the Company's principal shop. He volunteered to serve as the Union's observer in the election held September 1974, having earlier signed a union card, and, as noted above, it was his participation as an observer that formed one of the grounds for the Company's objections to the election. In January 1975, he was asked by Company President Edward Gambella to take a position with management, as production manager, and he did so somewhat reluctantly, on the promise of Gambella that he would be paid the highest amount he had earned in any year (including overtime earnings) theretofore.

Aleksiewicz was not too happy in his new position, and indicated on a number of occasions that he wanted to back to his old job "on the clock." Gambella repeatedly persuaded him to stay on the job as production manager, that he was more valuable to the Company and to himself in that position. Finally, in July 1975, Gambella acceded to Aleksiewicz' con-

tinued requests, told him he could "go back on the clock" and that Jeff Claxton would take over as production manager. During his tenure as production manager, Aleksiewicz was "responsible" for an error in a press run that cost the Company approximately \$13,000.

5 After Aleksiewicz resumed working as a rank-and-file employee, he was under Claxton's supervision. Shortly after he resumed working as a pressman, he had a conversation with Claxton, begun by Claxton mentioning something about "running two folders on the press." Aleksiewicz
10 responded, according to his testimony, "it is a lot more work running two folders and a lot more responsibility. Thank God the Union is coming in." That ended the conversation. Claxton gave a somewhat more expanded version of this conversation, testifying that Aleksiewicz said he would like to see the the Union "in here," that he (Claxton)
15 responded "You've got to be kidding," asked why, with Aleksiewicz saying "For the fringe benefits that I would get." Claxton then said "Well, I'm surprised to hear you say that. You'd have to pay dues. Just recently you were in a management position." Aleksiewicz then said "I was only kidding, Geoff. You know I was only kidding." Nothing more
20 was said about that matter, and Claxton never mentioned it to any management official. There is no credibility issue involved here. Actually, the fuller version of the conversation given by Claxton is, if anything, more damaging to the Company's position than is Aleksiewicz' version.

25 While working at Cavalier, according to Aleksiewicz, he customarily left work about 35-40 minutes before the end of the work day, while the press was being washed by the other employees, and had his card punched out "most of the time" by someone else. Gambella knew
30 about this, according to Aleksiewicz, although he (Aleksiewicz) does not remember when he told Gambella. 1/ He testified that this practice began only when he went to Cavalier, where he was "the boss," and he did not permit the other men in the shop to punch each other out; he was the only one with this privilege. He also testified that he told Gambella the
35 reason for this practice was the fact that he "was opening up in the morning and I was ordering stuff, you know, taking care of the shop, I expected this to be one of my privileges."

40 According to Aleksiewicz, when he returned to the press in August 1975, he "didn't leave the shop early because Claxton didn't

1/ His testimony was, "I imagine - - - let me see, '71, '70 -- the first six, seven months. I really don't recall."

like the idea of it." He changed his practice "because we had another boss." Other than "a day or two, I really sincerely don't remember that," he changed his old practice, and punched out at the time he left. He told Gambella about his previous "arrangement" with Gambella shortly after resuming press work, when Gambella caught him having his card punched out. But he testified, "I don't believe I done it again," that he knew Claxton "didn't like the idea." Claxton confirmed that Aleksiewicz mentioned the "arrangement" to him, and testified that he mentioned this to Gambella (confirmed by Gambella), who told Claxton that it was all right for Aleksiewicz to leave while the press was being washed, but that he had to punch out at that time, and that if he did not, Claxton was to let Gambella know.

On Friday, August 15, according to Claxton, he returned to the shop at about 4:15 p.m., after a meeting, looked for Aleksiewicz, and could not find him. He went to the time clock, and saw that Aleksiewicz' card was not punched out. At the end of the work day, he returned to the time clock, and saw that Aleksiewicz' card had been punched out at the time the rest of the employees left. He informed Gambella of this incident. Four days later, Aleksiewicz was discharged. Gambella told him that he was being let go, and when asked why, responded, according to Aleksiewicz' initial testimony, "For punching, somebody punching a time card and trying to build an organization here." At other points in his testimony, Aleksiewicz remembered Gambella saying that "he was trying to build an organization," "I was building an organization," and finally, "People punching your card and trying to build an organization, trying to build an organization."

According to Gambella, he told Aleksiewicz that he was being let go "Because of the fact of having other people punch his card out," and because "it was disrupting the entire organization." Gambella also testified that he recalls Aleksiewicz having left early while at Cavalier only two or three times, that there was no special arrangement permitting him to leave early and have someone else punch his card at normal quitting time, that the Company had signs posted over the time clocks that anyone caught punching a card for someone else would automatically be dismissed, and that he had no occasion to check whether Aleksiewicz was actually punching out when he left early while at Cavalier, because of his "long-standing friendship" with him, and because he was putting his trust in an employee "who was basically running a plant."

Although "trying to build an organization" suggests, without more, a reference to union activity, since Aleksiewicz himself varied his testimony to the point where the words were that Gambella, not

Aleksiewicz, was trying to build an organization (the Company - obviously not a union), since Gambella's own testimony supports this interpretation, and since there is no reason at all for Gambella to have believed that Aleksiewicz was "trying to build a [union] organization," I find that the words said were as testified to by Gambella. 2/

D. Discussion - Alleged Discriminatory Discharge

10 The General Counsel contends that the reason for Aleksiewicz' discharge was his "union activity," which, on this record, was limited to having been the observer for the Union at the September 1974 election, and having remarked to Claxton, early in August 1975, "Thank God the Union is coming in." 3/ The General Counsel argues that Respondent's attempt to "evade and delay" its obligation to bargain, culminating in its determination to litigate the validity of the certification, the conversation between Aleksiewicz and Claxton, and the discharge, all having taken place within weeks of one another, with the conversation demonstrating to Respondent Aleksiewicz' continuing interest in having the Union represent the employees, establish a prima facie case of a violation of Section 8(a)(3) of the Act. The General Counsel also points to the fact that Aleksiewicz had not been discharged in May 1975 despite being responsible (I assume he was so responsible, for purposes of this discussion) for a costly error, to show that his subsequent discharge for the very minor offense of having his card punched out after he left the plant was not for the given reason, but was a pretext. Finally, the General Counsel points to Gambella's statement to Aleksiewicz as to the basis for his discharge, construing Gambella's language as a reference to building up the Union.

30 Taking into account all the facts of this case, I cannot agree with the General Counsel's position. In the first place, Respondent's failure to discharge Aleksiewicz because of the error in May cuts the other way, in that Aleksiewicz had already been the Union's observer, he was in a management position where he could be discharged without cause and for union activity, clear good cause existed, and yet he was not discharged. Manifestly, therefore, Respondent did not resent his having

40 2/ Neither Aleksiewicz' being the Union observer almost a year earlier nor his brief conversation with Claxton (assuming Gambella to have, by imputation, known of it) suggests a leading role for Aleksiewicz in bringing in a union, when in fact a union was already "in" by virtue of the Board's certification, with only a legal test, before the Board and the Court of Appeals remaining.

45 3/ Based on Aleksiewicz' own testimony, as noted above.

5 served as the Union observer. Further demonstrating that Aleksiewicz having served as the Union observer did not engender any animosity on the part of Respondent is the fact that he was made the production manager after he so served, and that Respondent acquiesced in his request to return to the floor as a pressman, much against its own desires, when Aleksiewicz kept pressing Gambella to have him changed back to a pressman.

10 What remains, then, is the innocuous conversation between Aleksiewicz and Claxton, which occurred some weeks prior to the discharge. As noted above, this conversation scarcely established Aleksiewicz as a union activist; indeed, there was nothing in particular to be an activist about, for, as also noted above, the ball game was essentially over insofar as the employees' desires were concerned; what remained, 15 and still, in part, does remain, being the resolution of the Company's legal challenge to the validity of the Board's certification. Finally, there is the reason given by Gambella to Aleksiewicz for the discharge. As I have found above, I do not believe that the words used by Gambella can be construed as referring to a union, particularly in the light of 25 Aleksiewicz' own testimony, with its varying versions of what was said, some of them not even susceptible to the invidious construction urged by the General Counsel. Indeed, the very circumstances that militate against such a construction, apart from Aleksiewicz' own uncertainty as to what was said, also serve to negate any inference that might otherwise be 25 made that the discharge was occasioned by Aleksiewicz' having been the Union observer, and having indicated to Claxton his continuing desire for unionization of the Company's employees. For all these reasons, I conclude that the General Counsel has not established, on the entire record that the discharge of Aleksiewicz was violative of Section 8(a)(3) 30 and (1) of the Act.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

35

Conclusions of Law

40 1. All lithographic production employees, including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by Respondent at its Long Island City and Brooklyn plants, exclusive of all office clerical employees, sales employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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2. Since June 6, 1975, the Union has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

3. By refusing on or about August 25, 1975, and at all times thereafter, to bargain collective with the Union as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondents have not violated the Act by discharging Henry C. Aleksiewicz.

The Remedy

Having found that Respondents have engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and, upon request, bargain collective with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondents commence to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F. 2d 600 (C.A. 5, 1964), cert. denied 379 U. S. 817 (1964); Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F. 2d 57 (C.A. 10, 1965).

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 4/

4/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

10
ORDER

Respondents, Deven Lithographers and Cavalier Multicolor, Inc., Long Island City and Brooklyn, New York, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local One Amalgamated Lithographers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All lithographic production employees, including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by Respondents at its Long Island City and Brooklyn plants, exclusive of all office clerical employees, sales employees, guards, watchmen, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wage, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at their plants at Long Island City and Brooklyn, New York, copies of the attached notice marked "Appendix." 5/ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it

5/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BORD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."


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for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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(c) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

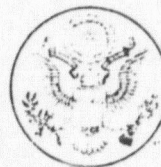
Dated, Washington, D. C.



Melvin J. Welles
Administrative Law Judge



NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local One, Amalgamated Lithographers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All lithographic production employees, including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by Respondent at its Long Island City and Brooklyn plants, exclusive of all office clerical employees, sales employees, guards, watchmen, and supervisors as defined in the Act.

DEVEN LITHOGRAPHERS, INC. and
CAVALIER MULTICOLOR CORP.

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241, Telephone (212) 596-5386.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEVEN LITHOGRAPHERS, INC., AND
CAVALIER MULTICOLOR CORP.

and

Case 29--CA--4555

LOCAL ONE, AMALGAMATED
LITHOGRAPHERS OF AMERICA

DECISION AND ORDER

On March 24, 1976, Administrative Law Judge Melvin J. Wallis issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief. Respondent filed exceptions and an answering brief to General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.^{1/}

^{1/} In making this determination, we do not pass on the issue of whether the 2-1/2-month period between the Union's certification and Respondent's unlawful refusal to bargain in order to test the certification was itself occasioned by any bad faith, or purpose of evasion, on Respondent's part. A finding that Respondent's conduct constituted a separate and distinct violation of Sec. 8(a)(5) of the Act would not affect the Board's remedy and Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondents, Deven Lithographers Inc., and Cavalier Multicolor, Corp., Long Island City and Brooklyn, New York, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. JUN 10 1976

John H. Fanning, Member

John A. Penello, Member

Peter D. Walther, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

UNITED STATES OF AMERICA
 FEDERAL NATIONAL LABOR RELATIONS BOARD
 REGION 29

DELTA LITHOGRAPHERS, INC. AND
 CAMERON MULTICOLOR CORP.

Joint Employers

Case No. 29-RC-2731

and

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
 OF AMERICA, AFFILIATED WITH INTERNATIONAL
 TYPOGRAPHICAL UNION, AFL-CIO

Petitioner

EMPLOYER'S EXCEPTIONS TO REGIONAL DIRECTOR'S
 REPORT AND RECOMMENDATIONS AND TO REGIONAL
 DIRECTOR'S ORDER DENYING MOTION FOR RECONSIDERATION
 AND FOR HEARING

Pursuant to Section 102.69 of the NLRB Rules and
 Regulations, as amended, the undersigned counsel for the
 Employer herein respectfully submits the following as the
 Employer's statement of Exceptions to the Report on
 Objections by the Regional Director of the 29th Region,
 dated January 9, 1975 in the above entitled matter, and
 to the Regional Director's Order Denying Motion for
 Reconsideration and for Hearing dated January 24, 1975.¹

¹

References herein to the Report on Objections will be as
 follows: (Rep. page); all references to the Order Denying
 Motion for Reconsideration will be: (ODM p.).

*HC 12
in aid*

1. The Regional Director erred in failing to find that employee Henry Aleksiewicz was a supervisor within the meaning of the Act and in failing to rule on the question of his supervisory status (Rep. p. 7).

2. The Regional Director erred in failing to find that the presence of Aleksiewicz as a supervisor acting as an union observer at the election was a violation of the Board's "laboratory conditions" and required setting the election aside (Rep. p. 7).

3. The Regional Director erred in failing to find that the distinctive relationship between supervisor Aleksiewicz and the employees at the plant where he was the sole management representative in charge of those employees required that the election be set aside because of his acting as the union observer at that plant (Rep. p. 7.) (ODM p. 1).

4. The Regional Director erred in finding that the employer "withheld from the petitioner the information concerning Aleksiewicz's supervisory status" (Rep. p. 7).

5. The Regional Director erred in failing to find that the employer had informed the petitioner at the informal conference which resulted in an election agreement that supervisor Aleksiewicz "runs the plant" at which he later acted as the union observer during the election (Rep. p. 7).

6. The Regional Director erred in failing to find that the fact that the ballot box was left unattended by the NLRB agent required the setting aside of the election (Rep. p. 8).

7. The Regional Director erred in failing to find that Objection number 1 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 1 (Rep. p. 7).

8. The Regional Director erred in failing to find that Objection 2 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 2 (Rep. p. 7).

9. The Regional Director erred in failing to find that Objection number 3 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 3 (Rep. p. 7).

10. The Regional Director erred in failing to find that Objection number 4 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 4 (Rep. p. 7).

11. The Regional Director erred in failing to find that Objection number 5 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 5 (Rep. p. 9).

12. The Regional Director erred in failing to find that Objection number 6 justified setting aside the election and in failing to recommend that the election should be set aside because of the allegation contained in Objection number 6 (Rep. p. 9).

13. The Regional Director erred in finding that Objection number 1 did not justify setting the election aside, and erred in recommending that Objection number 1 be overruled (Rep. p. 7).

19. The Regional Director erred in failing to recommend that the election be set aside (Rep. p. 10).

20. The Regional Director erred in recommending that a certification of representative be issued to the petitioner herein (Rep. p. 10).

21. The Regional Director erred in failing to find that the Employer's Motion for Reconsideration or for a Hearing on Objection Number 3 should be granted (ODM p. 1).

22. The Regional Director erred in finding that the Employer's Motion for Reconsideration and for Hearing "presented no evidence which had not been submitted and considered before" (ODM p. 1).

23. The Regional Director erred in finding that the Motion for Reconsideration and for a Hearing be denied (ODM p. 1).

WHEREFORE, the employer respectfully submits that the Board issue a decision and order upholding the Objections filed herein and directing that the election conducted on September 23, 1974 in this proceeding be set aside, or in the alternative, that a hearing be held on the issues raised by Objection Number 3.

Respectfully submitted,

Bridgehampton, NY
January 31, 1975

Hugh P. Husband, Jr.
Counsel for Employer
P.O. Box 950, Main Street
Bridgehampton, New York 11932

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of February, 1975, served a copy of the foregoing Exceptions and the Brief on the parties of record in the proceeding by mailing copies thereof, postage prepaid, to:

Regional Director
NLRB, 29th Region
16 Court Street
Brooklyn, New York 11241

James F. Gill Esq.
Robinson, Silverman et al
230 Park Avenue
New York, New York 10017

Hugh P. Husband Jr.

HUGH P. HUSBAND, JR.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEVEN LITHOGRAPHERS, INC., AND
CAVALIER MULTICOLOR CORP.
Respondent,

and

No. 29-CA-4555

LOCAL ONE, AMALGAMATED
LITHOGRAPHERS OF AMERICA
Charging Party

RESPONDENTS' EXCEPTIONS TO
DECISION OF ADMINISTRATIVE LAW JUDGE

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8 as amended, the undersigned Counsel for the Respondents herein respectfully submits the following as the Respondents' Statement of Exceptions to the Decision of Administrative Law Judge Melvin J. Welles, dated March 24, 1976. 1/

1. The Judge erred in finding that the Respondents had refused to bargain with the petitioning union herein in violation of Section 8(a)(5) of the Labor Management Relations Act as amended. (ALJ P.3) 2/

1/ Hereinafter, Administrative Law Judge Welles will be referred to as "the Judge" or "Judge Welles". References to the Decision of Judge Welles will be made as follows (ALJ P.).

2/ Hereinafter, references to the Labor Management Relations Act as amended will be as follows ("the LMRA" or "the Act")

2. The Judge erred in failing to find that the allegations of the complaint alleging a violation of Section 8(a)(5) of the Act should be dismissed on the ground that there was no valid certification due to the presence of a supervisor as the observer for the union at the election which was won by the charging party union.

3. The Judge erred in finding that, as a conclusion of law that "All lithographic production employees, including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by Respondent at its Long Island City and Brooklyn plants, exclusive of all office clerical employees, sales employees, guards, watchmen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act." (ALJ P7)

4. The Judge erred in finding that, as a conclusion of law that "Since June 6, 1975, the Union has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act." (ALJ P.8)

5. The Judge erred in finding that, as a conclusion of law that "By refusing on or about August 25, 1975, and at all times thereafter, to bargain collective with the Union as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act." (ALJ P.8)

6. The Judge erred in finding that, as a conclusion of law that "The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act." (ALJ P.8)

7. The Judge erred in finding and ordering the Respondents to "cease and desist" from refusing to bargain collectively with Local 1 "concerning rates of pay, wages, hours and other terms and conditions of employment" as the exclusive bargaining representative of its employees in the unit of all "lithographic production employees" employed by Respondents at their Long Island City and Brooklyn plants. (ALJ P.9)

8. The Judge erred in finding and in ordering the Respondents to "cease and resist" from "in any like or related manner interfering with restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act." (ALJ P.9)

9. The Judge erred in finding and in ordering the Respondents to "take the following affirmative action" of bargaining in good faith with the union upon request as the exclusive representative of all employees in the aforesaid appropriate bargaining unit.

10. The Judge erred in finding and in ordering the Respondents to post at their plants in Long Island City, Brooklyn, New York, copy of the notice marked "Appendix" for sixty (60) consecutive days and to notify the Regional Director for Region 29 of the NLRB of the steps that have been taken to comply with the Decision. (ALJ P.9-10)

11. The Judge erred in failing to find and to order that the Complaint in this proceeding should be dismissed in all of its particulars. (ALJ P.10)

CONCLUSION

The Employer respectfully submits that on the basis of the foregoing Exceptions, the National Labor Relations Board should dismiss the complaint herein in all of its particulars.

Respectfully submitted,

Hugh P. Husband, Jr.
Counsel for Respondents
P O Box 950
Bridgehampton, New York 11932

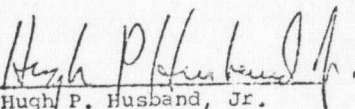
Dated: April 9, 1976
Bridgehampton, N.Y. 11932

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 1976, I served a copy of the foregoing Exceptions to the parties of record in this proceeding, or their counsel where known, by mailing a copy thereof, postage prepaid, to the following parties and counsel:

G. Peter Clark, Esq.,
National Labor Relations
Board
29th Region
16 Court Street
Brooklyn, N.Y. 11241

Mr. Frank J. Cassino, Jr.
Vice President
Local 1 ALA
113 University Place
New York, New York 10003


Hugh P. Husband, Jr.
Counsel for Respondents
P O Box 950
Main Street
Bridgehampton, New York 11932

Dated: April 9, 1976
Bridgehampton, New York 11932

FORM NLRB-501 (2-67)		Form Approved Budget Bureau No. 64-R001.12	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST EMPLOYER			
INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE Case No. <u>49-CA-4555</u> Date Filed <u>9/4/75</u>	
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer DEVEN LITHOGRAPHERS, INC.		b. Number of Workers Employed	
c. Address of Establishment (Street, city, state, and ZIP code) 550, St. James Place, Avenue Long Island City, N.Y. 11101		d. Employer Representative to Contact e. Phone No. 392-6740	
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory		g. Identify Principal Product or Service Lithographic Production.	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(e), subsections (1) and (3) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) Although the Union won a representation election on September 23, 1974 by a vote of 16 for and 7 against, the employer has still not consented to meet with the union for the purpose of negotiating a collective bargaining agreement. The employer has resorted to frivolous delaying tactics such as filing frivolous objections to the conduct of the election which the Regional office found to be without merit on January 9, 1975. Thereafter the employer filed a motion for reconsideration and a hearing which the Regional Director denied. The employer then appealed to the Board which on June 6, 1975 adopted the Regional Director's findings and recommendations and certified the union as bargaining representative. Repeated requests to bargain have been made by the union and ignored by the company. Counsel for the union has just been advised by counsel for the company that the company has no intention of bargaining with the union but intends instead to pursue further legal remedies. It is clear that the company intends by these delaying tactics to discourage interest in the union. In furtherance of this plan on or about August 20, 1975 it wrongfully discharged two employees, namely, Henry Aleksiewicz and Robert Grubsmith who served as the union's observers in the original election. Such discharges were because of the union activities of the discharges. The company should be ordered to bargain immediately and to reinstate the two discharged employees. By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.			
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) Local One, Amalgamated Lithographers of America			
4a. Address (Street and number, city, state, and ZIP code) 113 University Place New York, New York 10003			4b. Telephone No. AL 4-5404
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Typographical Union, AFL-CIO			
6. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By <u>Benjamin M. Robinson</u> <u>By James F. Gell</u> (Signature of representative or person filing charge) (General Counsel) Benjamin M. Robinson Address <u>230 Park Avenue, N.Y., N.Y. 689-7766</u> <u>September 2, 1975</u> (Telephone number) (Date)			
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			

29-C-30
(9/67)



27
NATIONAL LABOR RELATIONS BOARD

REGION 29

16 Court Street

Brooklyn, New York 11241

Telephone 596-3535

September 4, 1975

Deven Lithographers, Inc.
31-10 Hunters Point Avenue
Long Island City, New York 11101

Re: Deven Lithographers, Inc.

Case No.: 29-CA-4555

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you.

G. Pitt, Clerk
The investigation of this case has been assigned to
(Telephone No. 596-3766).

We enclose a copy of Form NLRB-4541, pertaining to our investigation and voluntary adjustment procedures.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete "Notice of Appearance" Form NLRB-4701 and forward it promptly to this office.

You are requested to submit promptly a complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge, together with any documents, records, memoranda, affidavits, etc., which support your position and statement of facts.

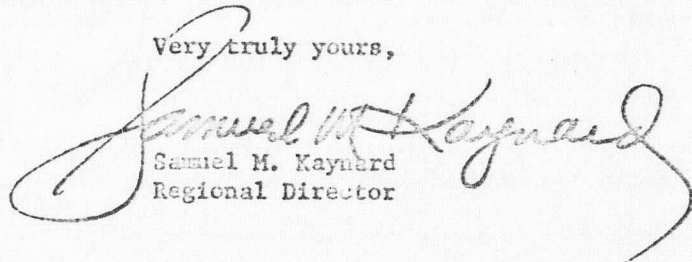
(62)

In connection with the investigation of this case, it is necessary that the employer execute the enclosed commerce questionnaire. Please forward one completed copy of the questionnaire to this office. You may retain the other copy for your files.

If you would like to discuss this matter before the case is processed further, please telephone the staff member assigned to the case. He will be glad to discuss the matter with you in an effort to dispose of whatever issues may be involved.

Your cooperation with this office is invited so that all facts of the case may be considered.

Very truly yours,


Samuel M. Kaynard
Regional Director

Enclosures
Registered Mail
Return Receipt Requested

CC: Local 1, Amalgamated
Lithographers of America
113 University Place
New York, New York 10003

Benjamin Robinson, Esq.
230 Park Avenue
New York, New York

29

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC., AND,
CAVALIER MULTICOLOR CORP.

and

Case No. 29-CA-4555

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local One, Amalgamated Lithographers of America, herein called the Union, that Deven Lithographers, Inc., and Cavalier Multicolor Corp., herein collectively called Respondent, have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned ^{Acting} Regional Director for Region 29, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by the Union on September 4, 1975, and served by registered mail upon Respondent on September 4, 1975.

2.(a) Deven Lithographers, Inc., and Cavalier Multicolor Corp. are and have been at all times material herein corporations duly organized under, and existing by virtue of, the laws of the State of New York.

(b) Deven Lithographers, Inc., and Cavalier Multicolor Corp. are, and at all times material herein have been, affiliated businesses with common officers, ownership, directors and operators, and constitute a single integrated business enterprise; the said directors, and operators formulate and administer a common labor policy for the aforementioned companies, affecting the employees of said companies.

(c)

(c) Deven Lithographers, Inc., and Cavalier Multicolor Corp., are, and at all times material herein have been, a single integrated enterprise engaged in the business of manufacture and sale of printing materials and related products, with principal offices and place of business at 31-10 Hunters Point Avenue, Long Island City in the Borough of Queens, City and State of New York, herein called the Long Island City plant, and another place of business at 192 Banker Street in the Borough of Brooklyn, City and State of New York, herein called the Brooklyn plant.

3. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its plants paper, inks, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its plants in interstate commerce directly from states of the United States other than the state in which it is located.

4. Respondent is and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. The Union, is and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6(a) Edward P. Gambello, is, and has been at all times material herein, the President of Deven Lithographers, Inc., acting on behalf of Respondent and an agent thereof.

(b) Jeff Claxon is, and has been at all times material herein, an agent of Respondent, acting on its behalf and a supervisor thereof within the meaning of Section 2(11) of the Act.

7. All lithographic production employees including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by Respondent at its Long Island City and Brooklyn plants exclusive of all office clerical employees, sales employees, guards, watchmen and supervisors as defined in the Act

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

8. (a) On or about September 23, 1974 pursuant to a Stipulation for Certification Upon Consent Election a majority of the employees of Respondent, in the unit described above in paragraph 7, by a secret ballot election conducted under the supervision of the Regional Director for Region 29 of the National Labor Relations Board, designated and selected the Union as its representative for the purposes of collective bargaining with Respondent.

(b) On or about June 6, 1975, the Board certified the Union as the exclusive collective bargaining representative of the employees in said unit, and at all times since the latter date, the Union by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the unit for the purposes of collective bargaining.

9. On or about June 10, 1975, the Union requested Respondent to bargain collectively with it as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of such employees.

10. On or about June 10, 1975 Respondent refused, and since said date has continued to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of Respondent's employees in the unit described above in paragraph 7.

11. On or about August 19, 1975, Respondent discharged its employee Henry C. Aleksiewicz, hereinafter called Aleksiewicz.

12. Since the date of the discharge of Aleksiewicz as described above in paragraph 11, Respondent has failed and refused to reinstate Aleksiewicz to his former or substantially equivalent position of employment.

13. Respondent discharged and thereafter failed and refused to reinstate its employee Aleksiewicz as described above in paragraphs 11 and 12 because said employee joined and assisted the Union, and engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

14. By the acts described above in paragraphs 10 through 13 and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15. By the acts described above in paragraphs 11 through 13 and by each of said acts, Respondent discriminated and is discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

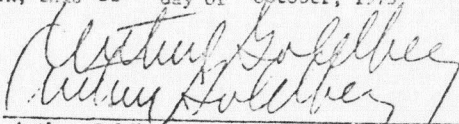
16. By the acts described above in paragraph 10 and by each of said acts, Respondent refused to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby engaged in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

17. The acts of Respondent described above in paragraphs 10 through 13 occurring in connection with the operations of Respondent, described above in paragraphs 2 through 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 8th day of January, 1976 at 10:00 a.m. at 16 Court Street, fourth floor, in the Borough of Brooklyn, City and State of New York, and consecutive days thereafter until concluded, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement Of Standard Procedures In Formal Hearings Held Before The National Labor Relations Board In Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York, this ^{31st} day of October, 1975.


Arthur Goldberg
Acting Regional Director, Region 29
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE
NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS
PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board. Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEVEN LITHOGRAPHERS, INC., AND
CAVALIER MULTICOLOR CORP.

and

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA

Case No. 29-CA-4555

AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING

DATE OF MAILING OCT 31, 1975

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Deven Lithographers, Inc.
ATT: Ed Gambello, Pres.
31-10 Hunters Point Ave.
Long Island City, N.Y. 11101

Local One, Amalgamated Lithographers
of America
ATT: Frank Cosino, Bus. Og.
113 University Place
New York, N.Y. 10003

Hugh P. Huxband, Jr., Esq.
Main Street
Bridgehampton, N.Y. 11932

Robinson, Silverman, Pearce, Aronsohn
Sand & Berman
ATT: James F. Gill, Esq.
230 Park Avenue
New York, New York 10017

Subscribed and sworn to before me

this 31st day of October 1975

Barbara Hunt

Designated Agent

NATIONAL LABOR RELATIONS BOARD

37

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery..... 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
 Helen Ruth
 31-10 Hudson Rd. New York, N.Y.

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 44-585 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
 K. Hock

4. DATE OF DELIVERY NOV 3 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: SPO

2. ARTICLE ADDRESSED TO:
 Local 1 - Ruth
 113 University Ave.

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 44-584 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
 Ed. Bern

4. DATE OF DELIVERY NOV 3 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

2. ARTICLE ADDRESSED TO:
 H. Huskynd
 Miami St.
 Bridgeton, N.J.

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 44-586 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
 Helen P. Ruth

4. DATE OF DELIVERY NOV 3 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☒ Show to whom and date delivered..... 15¢
☐ Show to whom, date, & address of delivery..... 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered..... 65¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
 Robinson
 136 Fourth Ave
 New York, N.Y.

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 44-587 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
 J. M. Mott

4. DATE OF DELIVERY NOV 3 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: OFFICE INITIALS

(d2)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC., AND
CAVALIER MULTICOLOR CORP.

and

Case No. 29-CA-4555

LOCAL ONE, AMALGAMATED
LITHOGRAPHERS OF AMERICA

ANSWER OF RESPONDENT EMPLOYERS

The Respondent employers herein, Deven Lithographers Inc., and Cavalier Multicolor Corp., by their attorney, Hugh P. Husband, Jr., for an Answer to the Complaint heretofore filed in the above captioned matter:

1. Admits the allegations contained in paragraphs 1,2,3,4,5, 6(a), 7 and 11 of the Complaint.
2. Denies each and every one of the allegations contained in paragraphs 6(b), 8,9,10,12,13,14,15,16 and 17 of the Complaint.

WHEREFORE, it is respectfully requested that the Complaint herein be dismissed.

Hugh P. Husband, Jr.
Attorney for Respondent Employers
P.O. Box 950
Bridgehampton, New York 11932

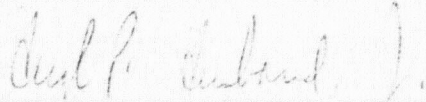
Dated: November 8, 1975
Bridgehampton, New York 11932

(e)

CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of November, 1975 served a copy of the foregoing answer on the parties directed in this proceeding or their counsel where known, by mailing a copy thereof, postage prepaid to:

James F. Gill, Esq.
Robinson, Silverman et al
230 Park Avenue
New York, New York 10007



Hugh P. Husband, Jr.

Dated: November 8, 1975
Bridgehampton, New York 11932

Deven Lithographers, Inc.
Cavalier Multicolor Corp.
Case No. 29-CA-4555

Index and Description of Formal Papers:

- (a) Charge in Case No. 29-CA-4555, filed September 4, 1975.
- (b) Affidavit of service of 1(a), above, dated September 4, 1975, with registered mail, return receipt attached.
- (c) Complaint and Notice of Hearing in Case No. 29-CA-4555 issued October 31, 1975 with form NLRB-4568 Attached.
- (d) Affidavit of service of 1(c), above, dated October 31, 1975 with registered mail return receipts attached.
- (e) Respondent's answer in Case No. 29-CA-4555 received November 11, 1975.
- (F) Index and Description of Formal Papers in Case No. 29-CA-4555.

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PETITION

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering them accordingly.

DO NOT WRITE IN THIS SPACE	
CASE NO.	79-CC-2231
DATE FILED	8-12-74

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

- ☒ RC-CERTIFICATION OF REPRESENTATIVES—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- ☐ RD-DECERTIFICATION—A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: (Check one) ☐ In unit not previously certified ☐ In unit previously certified in Case No. _____
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. _____

Attach _____ statement describing the specific amendment sought.

2. NAME OF EMPLOYER DEVEN LITHOGRAPHERS, INC. d/b/a CAVALIER MULTICOLOR CORP.	EMPLOYER REPRESENTATIVE TO CONTACT	PHONE NO.
3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code) 31-10 Hunters Point Ave., Long Island City, N.Y. 11101 (Deven) & 192 Banker St., Brooklyn, N.Y. 11222 (Cavalier)		
4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) Factory	4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE Lithography	

5. Unit Involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included

All lithographic production employees

Excluded

All others, and supervisors within the meaning of the Act

- 6a. NUMBER OF EMPLOYEES BY UNIT.

PRESENT 22

PROPOSED (BY UC PET.)

- 6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?

☒ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item "a" or "b" whichever is applicable)

- 7a. ☒ Request for recognition as Bargaining Representative was made on August 9, 1974
declined recognition on or about no reply received (If no reply received, so state)

- 7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME None	AFFILIATION
ADDRESS	DATE OF RECOGNITION OR CERTIFICATION

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)
None

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

- 11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED?
YES _____ NO ☒

- 11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

- 11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____ (Insert name) A L I O R

ORGANIZATION, OF _____ SINCE _____ (Insert address) (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11C) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE (If none, so state)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petitioner is filed by Employer)
None			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Local One, Amalgamated Lithographers of America, Affiliated with International Typographical Union, (Petitioner and Affiliation, if any) AFL-CIO

By Benjamin M. Robinson, General Counsel

Address 230 Park Avenue, New York, New York 10017 (212) 689-7766
(Street and number, city, State, and ZIP Code) (Telephone number)

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION

Pursuant to a Petition duly filed under Section 9 of the National Labor Relations Act, as amended, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), the undersigned parties hereby AGREE AS FOLLOWS:

1. **SECRET BALLOT.**—An election by secret ballot shall be held under the supervision of the said Regional Director, among the employees of the undersigned Employer in the unit defined below, at the indicated time and place, to determine whether or not such employees desire to be represented for the purpose of collective bargaining by (one of) the undersigned labor organization(s). Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the applicable procedures and policies of the Board.

2. **ELIGIBLE VOTERS.**—The eligible voters shall be those employees included within the Unit described below, who were employed during the payroll period indicated below, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, also eligible are employees engaged in an economic strike which commenced less than twelve (12) months before the election date and who retained their status as such during the eligibility period and their replacements, but excluding any employees who have since quit or been discharged for cause and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated prior to the date of the election, and employees engaged in an economic strike which commenced more than twelve (12) months prior to the date of the election and who have been permanently replaced. At a date fixed by the Regional Director, the parties, as requested, will furnish to the Regional Director, an accurate list of all the eligible voters, together with a list of the employees, if any, specifically excluded from eligibility.

3. **NOTICES OF ELECTION.**—The Regional Director shall prepare a Notice of Election and supply copies to the parties describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The parties, upon the request of and at a time designated by the Regional Director, will post such Notice of Election at conspicuous and usual posting places easily accessible to the eligible voters.

4. **OBSERVERS.**—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the non-supervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally.

5. **TALLY OF BALLOTS.**—As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to each of the parties.

6. **POST-ELECTION AND RUN-OFF PROCEDURE.**—All procedure subsequent to the conclusion of counting ballots shall be in conformity with the Board's Rules and Regulations.

7. **RECORD.**—The record in this case shall be governed by the appropriate provisions of the Board's Rules and Regulations and shall include this stipulation. Hearing and notice thereof, Direction of Election, and the making of Findings of Fact and Conclusions of Law by the Board prior to the election are hereby expressly waived.

8. **COMMERCE.**—The Employer is engaged in commerce within the meaning of Section 2(6) of the National Labor Relations Act, and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (Insert commerce facts.)

See attached rider.

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9. WORDING ON THE BALLOT.—Where only one labor organization is signatory to this agreement, the name of the organization shall appear on the ballot and the choice shall be "Yes" or "No." In the event more than one labor organization is signatory to this agreement, the choices on the ballot will appear in the wording indicated below and in the order enumerated below, reading from left to right on the ballot, or if the occasion demands, from top to bottom. (If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect.)

First.

Second.

Third.

10. PAYROLL PERIOD FOR ELIGIBILITY.—

Week ending August 20, 1974

11. DATE, HOURS, AND PLACE OF ELECTION.—

Date: September 23, 1974

Hours and Place: 8:00 AM to 8:00 AM at Employer's premises located at
192 Banker Street, Brooklyn, N. Y.
10:00 AM to 10:30 AM at Employer's premises located at
31-10 Hunters Point Avenue, Long Island City, New York.
Count at latter location at close of polls.

12. THE APPROPRIATE COLLECTIVE BARGAINING UNIT.—

INC. UNED: All lithographic production employees including assemblers, platemakers, strippers, pressmen, operators, tenders, and general lithographic helpers employed by the Employer at its places of business located at 31-10 Hunters Point Avenue, Long Island City, New York and 192 Banker Street, Brooklyn, New York.

EXCLUDED: All office clerical employees, sales employees, guards, watchmen and supervisors as defined in the Act.

If Notice of Representation Hearing has been issued in this case, the approval of this stipulation by the Regional Director shall constitute withdrawal of the Notice of Representation Hearing heretofore issued.

Seven Lithographs, Inc. and
Chevalier Multicolor Corp.,
Joint Employer

31-10 Hunters Point Ave., LIC, NY (Seven)
192 Banker St., Bklyn, N.Y. (Chevalier)

(Address)
By /s/ Edward Gambella, Pres. 8/27/74
Edward Gambella, Pres. (Date)

Recommended:

/s/ Jack D. Eisenberg 8/27/74
(Board Agent) (Date)
Jack D. Eisenberg
Date approved 8/29/74
/s/ Samuel H. Keyser

Regional Director,
National Labor Relations Board.

Case No. 29-RC-2731

Local One, Associated Lithographers of
America, affiliated with International
Typographical Union, AFL-CIO
(Name of Organization)

223 University Place, New York, N. Y.
(Address)
By /s/ Frank Carino, Jr., Bus. Agent 8/27/74
Frank Carino, Jr., Bus. Agent (Date)

(Name of other Organization)

(Address)

By _____ (Date)
(Name and Title)

GPO 1152-0-405-000

CONCERN:

Deven Lithographers, Inc., and Cavalier Multicolor Corp., both New York corporations engaged in the business of manufacture and sale of printing materials and related products with their respective places of business located at 31-10 Bowne Point Avenue, Long Island City, New York and 162 Banker Street, Brooklyn, New York, are and at all times material herein have been, affiliated businesses with common officers, ownership, directors and operators and constitute a single integrated business enterprise; the said directors and operators formulate and administer a common labor policy for the aforesaid companies, affecting the employees of said companies. During the past year, the aforesaid companies have purchased products valued in excess of \$50,000 directly from firms located outside the state of New York, said products having been transported to the aforesaid companies places of business in New York from points located outside the state of New York.

AUGUST 27, 1974

STIPULATION

THE BELOW LISTED EMPLOYEES OF THE EMPLOYER ARE AGREED TO BE THE ONLY EMPLOYEES ELIGIBLE TO VOTE IN CASE NO. 29-CC-2731 IN THE ELECTION TO BE CONDUCTED ON MONDAY, SEPTEMBER 23, 1974, AND THE PARTIES AGREE THAT BY SIGNING THIS LIST THEY ARE MAKING DISPOSITION OF ALL QUESTIONS OF ELIGIBILITY AND THIS RESOLUTION IS FINAL AND BINDING ON THEM UNLESS IT IS IN PART OR IN WHOLE CONTRARY TO THE ACT OR ESTABLISHED BOARD POLICY.

ELIGIBLE EMPLOYEES

GERALD	F. ADLER
HENRY	ALIKSIENICZ
ANNE	ALOGNA
ANTONIO	BAJOLATO
ARTHUR	BROWN
FRANK	CANDIANO
WILLIAM	CLOWNEY
JAMES	DE WITT

(cont.)

D.H.

DC 4.
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JAMES GARCIA
 ROBERT GRUBBSMITH
 PIERRE JOSEPH
 PETER JUNG
 JOHN KAMINSKI
 CLEMENTE MACHIN
 PABLO MONTALVO
 SAMUEL MOORE
 FRANCESCO MORROWE
 HERNAN NIETO
 PIETRO RECA
 BENJAMIN REIKOSH
 JOHN STAMATIADIS
 JAMES SIKALABAN
 SAMUEL TOLSTON
 GEORGE WEEKS
 THEODORE WEMPE, JR.
 GERARDO VILLANIL
 SNEJDO YARMAN

DEVEN LITHOGRAPHICS, INC.
 and CAVALIER MULTICOLOR CORP.

by [Signature]
 8/27/74 JAZZ

LOCAL ONE, ALA, ITU, AFL-CIO

by [Signature]
 August 27, 1974

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CERTIFICATION ON CONDUCT OF ELECTION

Name of employer DEVEN LITHOGRAPHERS, INC., AND Case No. 29-RC-2731
CAVALIER MULTICOLOR CORP.
Date of election SEPTEMBER 23, 1974 Place 132-Baker Street, Bklyn., N.Y.
31-10 B'way, Point Avenue
TIME: 11 3:00 A.M. - 4:30 A.M. Poll #1 Employer's Premises
Poll #2 Employer's Premises
The undersigned, acting as agents of the Regional Director and authorized observers, respectively, in the conduct of the balloting at the above time and place.

WE HEREBY CERTIFY that such balloting was fairly conducted, that all eligible voters were given an opportunity to vote their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

For DEVEN LITHOGRAPHERS, INC., AND For the Regional Director, Region
CAVALIER MULTICOLOR CORP.,
With full authority: [Signature] 1st Session
With full authority: [Signature] 2nd Session

For LOCAL ONE, AMALGAMATED LITHOGRAPHERS For
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO
[Signature] 1st Session
[Signature] 2nd Session

ACS
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September 27, 1974

Regional Director, NLRB
Region 29
16 Court Street
Brooklyn, New York 11241

Re: Devan Lithographers Inc. and Cavalier Multi Color Corp.
29-RC-2751

Dear Sir:

I represent the employer in the above representation proceeding, the election in which was conducted on September 23, 1974.

This letter, of which you are being sent four copies, will serve as the employer's objections to conduct affecting said election. The specific objections are as follows:

1. That employees were included in the voter eligibility list for said election who were not in fact, "lithographic production" employees; while certain of these employees were challenged at the time of the election, other employees with the same disabilities requiring their exclusion from voting were not challenged.
2. That employees who were "supervisors" within the meaning of the LMRA were consciously included by the parties in the agreed upon unit.
3. That an employee who was a "supervisor" within the meaning of the LMRA acted as an observer for one of the parties at the election and his presence as an observer of necessity affected the employees participating therein and thus violated the "laboratory conditions" properly required by the Board for elections.

4. That during the conduct of the election at the two locations at which it took place, the NLRB agent in charge of the election misled observers regarding their duties and the manner in which they could perform the functions entrusted to them as observers under the Board's rules and regulations.

5. That the NLRB agent in charge of conducting the election left the ballot box unattended for a sufficiently long period of time that it was susceptible to being tampered with by others.

6. That the union participating in the election and its authorized agents, made written and oral misrepresentations to the employees participating therein, which misrepresentations were likely to be acted upon and which were made at such a time and place that it was impossible for the employer to respond to them.

My client will cooperate with your office in every reasonable manner in connection with your investigation of these objections and will provide information in support of them upon a reasonable notice from your office.

My thanks for your cooperation.

Very truly yours,

Hugh P. Husband, Jr.

cc: Local 1, ALA
115 University Place
New York, New York 10011

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.,

Joint Employers

and

Case No. 29-RC- 2731

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

REPORT ON OBJECTIONS

Pursuant to a representation petition filed on August 12, 1974, a Stipulation For Certification Upon Consent Election was entered into on August 27, 1974, by and between Deven Lithographers, Inc., and Cavalier Multicolor Corp., hereinafter called the Employer, and Local One, Amalgamated Lithographers of America, Affiliated with International Typographical Union, AFL-CIO, hereinafter called the Petitioner. Pursuant to the said Stipulation, an election by secret ballot was conducted on September 23, 1974 in a unit consisting of all lithographic production employees including cameramen, platemakers, strippers, pressmen, operators, tenders and general lithographic helpers employed by the Employer at its places of business located at 31-10 Hunters Point Avenue, Long Island City, New York and 192 Banker Street, Brooklyn, New York, but excluding all office clerical employees, sales employees, guards, watchmen, and supervisors as defined in the Act.

The Tally of Ballots served upon the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters	27
Void ballots	0
Votes cast for Petitioner	16

Votes cast against participating labor organization	7
Valid votes counted	23
Challenged ballots	3
Valid votes counted plus challenged ballots	26

Challenges are not sufficient in number to affect the results of the election. A majority of the valid votes counted plus challenged ballots has been cast for Petitioner.

Thereafter, on September 30, 1974, the Employer filed timely objections to the conduct of the election and to the Petitioner's conduct affecting the results of the election. The objections allege as follows:

1. That employees were included in the voter eligibility list for said election who were not in fact, "lithographic production" employees; while certain of these employees were challenged at the time of the election, other employees with the same disabilities requiring their exclusion from voting were not challenged.
2. That employees who were "supervisors" within the meaning of the LMRA were consciously included by the parties in the agreed upon unit.
3. That an employee who was a "supervisor" within the meaning of the LMRA acted as an observer for one of the parties at the election and his presence as an observer of necessity affected the employees participating therein and thus violated the "laboratory conditions" properly required by the Board for elections.
4. That during the conduct of the election at the two locations at which it took place, the NLRB agent in charge of the election misled observers regarding their duties and the manner in which they could perform the functions entrusted to them as observers under the Board's rules and regulations.
5. That the NLRB agent in charge of conducting the election left the ballot box unattended for a sufficiently long period of time that it was susceptible to being tampered with by others.
6. That the union participating in the election and its authorized agents, made written and oral misrepresentations to the employees participating therein, which misrepresentations were likely to be acted upon and which were made at such a time and place that it was impossible for the employer to respond to them.

Pursuant to paragraph 6 of the Stipulation For Certification Upon Consent Election, the undersigned caused an investigation of the objections to be made during which all parties were afforded full opportunity to submit evidence bearing on the issues. The undersigned also caused an independent investigation to be made. The investigation disclosed the following:

Deven Lithographers, Inc. and Cavalier Multicolor Corp., the Employer herein, are both New York corporations, engaged in the production and sale of printed materials and related products with their respective places of business located at 31-10 Hunters Point Avenue, Long Island City, New York, hereinafter called the Deven shop, and 192 Banker Street, Brooklyn, New York, hereinafter called the Cavalier shop where at all times material herein, it employed approximately 27 lithographic production employees in one daily shift.

THE OBJECTIONS

OBJECTIONS NOS. 1, 2, 3 and 4

These first three objections are based upon the Employer's allegation that the election was invalidated because management and supervisory personnel voted and otherwise participated in the election process without challenge whereas the votes of other non-unit personnel were challenged. More specifically, the Employer objects to the fact that Benjamin Rekosh, its vice-president and general manager, was forced to cast a challenged ballot while supervisor and manager Henry Aleksiewicz was allowed to vote without challenge and also to act as an observer for the Petitioner.

Objection No. 4 is grounded on the Employer's assertion that the Board Agent in charge of the election refused to explain the challenge procedure to the Employer's observer or to Gambella and misled the Employer into believing it could not challenge any of the voters on the stipulated list.

On August 27, 1974, the parties attended a conference at the Regional Office at which time they entered into a Stipulation For Certification Upon Consent Election. Simultaneously, they agreed upon^{1/} and signed a stipulated eligibility list containing Norris-Thermador language, which was prepared by the Employer's attorney, who together with Employer's president Gambella, attended and participated in the said conference. There were 27 names on the list, including Rekosh and Aleksiewicz, who were represented by the Employer to be performing the lithographic production functions of preparatory and press work respectively. The Employer admits it did not disclose the managerial and supervisory status of these two. However, as explanation, the Employer's president, Edward Gambella, stated that he was not aware of the Act's definition of a supervisor, and he believed they should be eligible to vote because they do perform unit work. It should be noted that the appropriate unit herein, specifically excludes all supervisors.

When Rekosh appeared at the polls, his vote was challenged in the circumstances described infra. Aleksiewicz not only was not challenged, he volunteered and was permitted to act as Petitioner's observer at the first voting session, when no other individual would agree to act as an observer. In addition to Rekosh, two other individuals on the list were challenged by the Petitioner as not doing lithographic production work. There is no allegation that they were supervisory or managerial personnel, although one of them might possess some minor indicia of supervisory authority. The Employer's observer did not challenge any of the voters.

^{1/} Norris-Thermador Corporation, 119 NLRB 1301.

The Employer's bookkeeper acted as its observer at both sessions. Aleksiewicz acted as observer for Petitioner at the first session and one Robert Grubsmith, a stripper, acted as its observer for the second session. According to both Gambella and the bookkeeper, the union representative in their presence asked for a volunteer to act as Petitioner's observer before the first session began. When no one else volunteered, Aleksiewicz offered his services. Neither the Employer's president nor its observer raised any objection. After management and union officials left, the Board Agent gave the observer a copy of the Board's printed Instructions To Election Observers form to read, a copy of which is attached as Appendix A. The Employer's observer states that she had read the same form earlier but reread it anyway. She says she was still unclear on the challenge procedure. Therefore, she asked the Board Agent what it meant to challenge and he told her not to worry about it because there wouldn't be any challenges anyway. The observer then dropped the matter. No challenges were made at the first session.

Prior to the opening of the second session, Gambella accompanied the Union representative when the latter sought a volunteer to act as observer at the second polling place. After Grubsmith volunteered, the Union representative in Gambella's presence told him to challenge Rekosh and another employee. Following this incident, the Employer's president asked the Board Agent what the theory of challenging was in view of the agreed-upon list. The Board Agent allegedly replied that a challenge did not mean anything and the Employer should ignore it since it was a technicality and the Board would not recognize a challenge 99% of the time where there was an agreed-upon list. Gambella then left the polling area.

When Rekosh appeared to vote, he was challenged by Petitioner's observer. Resosh describes the circumstances as follows: After he gave his name, the Board Agent asked Petitioner's observer if he was going to challenge the voter. When the observer said yes, the Board Agent asked him on what ground. The observer said he did not know so the Agent asked if Rekosh was a supervisor. The Petitioner's observer said yes, and the voter was thereupon voted subject to challenge. Both the observers disagree with Rekosh's account and state that the Petitioner's observer initiated the challenge.

Thereafter, voter Anne Alogna was challenged by Petitioner as not in the unit. When the Employer's observer asked to challenge the challenge, she was told by the Board Agent not to worry about it because the voter's vote would be put in a challenge envelope. The Union later challenged John Stamatiades without incident. The Employer's observer states that she had not been instructed to challenge any voters.

In Norris-Thermador, the Board stated that where the parties entered into a written and signed agreement expressly resolving the issues of eligibility, the Board would consider such an agreement as a final determination of the eligibility issues treated therein unless it was "in part or in whole, contrary to the Act or established Board policy."^{2/} As one of the exceptions to the binding nature of the list, however, it does hold that it will permit a challenge to a ballot cast by an alleged supervisor in circumstances similar to that herein.^{3/}

^{2/} Id. at 1302.

^{3/} Laymon Candy Company, 199 NLRB 547; Fisher New Center Company, 184 NLRB 809.

Assuming that the Employer is correct in claiming that Rekosh and Aleksiewicz are supervisors within the meaning of the Act and challenges to their ballots would have been sustained, as noted above Rekosh was challenged but the challenge to his ballot was not determinative. If Aleksiewicz had been challenged, the challenge to his ballot sustained, and his ballot not counted, the outcome of the election would not have been altered.^{4/} Under all the circumstances, then, and noting particularly that the Employer first misled the other party and the Board - whether advertently or inadvertently - by not disclosing the status of the alleged supervisors, I find that the Employer was not prejudiced by its alleged failure to understand and exercise the challenge procedure. Thus, even if the Board Agent incorrectly stated the Board's position on such challenges, it had no effect on the outcome of the election.

Lastly, the Employer now claims that Aleksiewicz's participation as an observer of necessity must have had an impact on the employees and violated the laboratory conditions required for conducting the election. In this regard, it is clear that, as discussed *infra*, the Employer made known to the employees its opposition to unionization and to the Petitioner. Moreover, by Gambella's own admissions, it was the Employer who withheld from the Petitioner the information concerning Aleksiewicz's supervisory status raised no objection to his acting as Petitioner's observer until the objections herein were filed. Although it is clear that under reverse circumstances, the Petitioner might have had valid objections, I do not believe that the Employer, having lost the election, can now seek to profit by its own arguably objectionable conduct to the detriment of the Petitioner. Finally, no evidence has been presented to establish that Aleksiewicz's participation in the manner described above, interfered with or in any manner prevented a fair election.^{5/}

I recommend that Objections 1, 2, 3 and 4 be overruled.

^{4/} The Employer does not assert specifically that any other ineligible voters voted, although in his statement Rekosh mentions one additional person, Jerry Adler, "on whom he relies." Even if this last individual were excluded in addition to Aleksiewicz and the challenged voters, the results would not be changed.

^{5/} Plant City Welding and Tank Company, 119 NLRB 131, 132.

Objection No. 5

In this Objection, the Employer contends that the ballot box was left unattended for a sufficiently long period of time to be susceptible to being tampered with by others.

The facts are not in dispute. The election was conducted in two polling sessions. At the end of the first session and in the presence of the observers, Employer president Gambella, and the Union representative, the Board Agent sealed the ballot box and had Gambella, and the Union representative sign across the seal and the box. The Board Agent then dismantled the voting booth, packed up the election materials and started to walk out of the room in which the election had been held, followed by the Employer's president. The Union representative was still present and the Employer's observer had just started to leave the area. The observer states that, when she was about 25 feet from the voting area, she saw an employee point to the box and simultaneously heard Gambella shout to the Board Agent that he had forgotten the box. She says that the Board Agent was probably about 25 feet from the box and that no more than 1 to 2 minutes had elapsed since the box was sealed. Gambella corroborates her statement, except that he would place the Board Agent at 50 feet from the box. Before the start of the afternoon session, the parties examined the ballot box and allege there was no indication that the seal had been tampered with.

It is clear from the above recitation that, although carelessness in the handling of the ballot box is not to be condoned, this instant situation is not the type which impels the Board to set aside the election. As a practical matter, the ballot box was out of the physical possession of the Board Agent for a maximum of two minutes. The Employer's representative and possibly the Union representative were in even closer proximity to it during that period of time, neither of them contend that they saw any other unauthorized individual in the immediate area of the box, and the ballot box was clearly intact. Accordingly, I find there was no reasonable possibility of irregularity in the conduct of the election.

I recommend that Objection No. 5 be overruled. 6/

Objection No. 6

In this Objection, the Employer claims that Petitioner made oral and written misrepresentations to employees, at a time and place where it was impossible to respond. In support of the Objection, it submitted letters sent by the Petitioner on September 5 and 12, copies of which are attached as Appendixes B & C. As noted above, the election was held on September 23.

The Employer asserts that the Petitioner is exaggerating its claims that employees are involved in negotiating contracts, that they do not have to solicit their own jobs and that they all receive unemployment benefits from the Union; that it is misleading the employees into believing that they will receive the benefits of Local 1's standard contract without any negotiations with the Employer; and that it is being untruthful in stating that the Company has spread false stories about the Petitioner and implying that employees who were active in the earlier election were discharged or involuntarily terminated.

The investigation revealed that Gambella received copies of the Union literature from Rakosh prior to the election. It also revealed that Gambella held at least two meetings of his own with employees, at which he presented his views of the Petitioner's claims.

The Board's position on setting aside elections because of the misuse of propaganda during the pre-election campaign has been clearly stated:

Thus we believe that an election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election. 7/

As it is clear there that, at most, the Petitioner was engaged in campaign puffing and, more importantly, the Employer had ample opportunity to respond, there is no merit to this objection.

I recommend that Objection No. 6, be overruled.

6/ People's Drug Stores, Inc., 202 NLRB 1145.

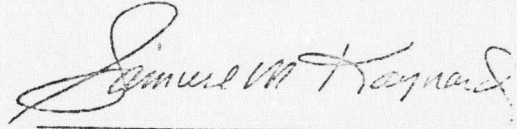
7/ Hollywood Ceramics Company, Inc., 140 NLRB 221, 224.

Although not alleged as an objection, during the course of the investigation the Employer objected to an alleged meeting of the Board Agent and Union representative outside the Employer's premises before the election. Gambella alleged that, as he was driving to the plant with the bookkeeper on the morning of the election, he saw the Board Agent sitting in a car with someone who "appeared to be" the Union representative; but he "was not absolutely sure it was." The bookkeeper says she did not see the Board Agent before she met with him in the polling areas. The Board Agent says that he was sitting alone in his car, having arrived outside the plant too early for the election.

In view of the nature of the evidence described above, I find that nothing objectionable occurred.

Having recommended that each of the objections be overruled I further recommend that a Certification of Representative issue to the Petitioner. 2/

Dated at Brooklyn, New York this 9th day of January 1975.



Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

2/ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D. C. Exceptions must be received by the Board in Washington by January 22, 1975.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

59

INSTRUCTIONS TO ELECTION OBSERVERS

DUTIES (General):

1. Act as checkers and watchers.
2. Assist in identification of voters.
3. Challenge voters and ballots.
4. Otherwise assist agents of the Board.

THINGS TO DO (Specific):

1. Identify voter.
2. Check off the name of the person applying to vote. One check before the name by one organization. One check after the name by the other organization or the Company.
3. See that only one voter occupies a booth at any one time.
4. See that each voter deposits a ballot in the ballot box.
5. See that each voter leaves the voting room immediately after depositing his ballot.
6. Report any conflict as to the right to vote to the agent of the Board at your table.
7. Remain in the voting place until all ballots are counted in order to check on the fairness of the count, if ballots are counted at that time. If they are not counted immediately, you will be informed as to when and where ballots will be counted.
8. Report any irregularities to the Board agent as soon as noticed.
9. Challenge voters only for good cause.
10. Wear your observer badge at all times during the conduct of the election.
11. BE ON TIME. (One-half hour before the time for the opening of the polls.)

THINGS NOT TO DO (Specific):

1. Give any help to any voter. Only an agent of the Board can assist the voter.
2. Electioneer any place during the hours of the election.
3. Argue regarding the election.
4. Leave the polling place without the agent's consent.
5. Use intoxicating liquors.
6. Keep any list of those who have or have not voted.

As an official representative of your organization, you should enter upon this task with a fair and open mind. Conduct yourself so that no one can find fault with your actions during the election. You are here to see that the election is conducted in a fair and impartial manner, so that each eligible voter has a fair and equal chance to express himself freely and in secret.

September 5, 1974

Dear Fellow Lithographer:

The election to be held in your shop on September 23rd may very well determine your future as a lithographic worker.

The stories being spread by your employer are designed to frighten you into voting his way. All contract terms must be negotiated between the company and Local One after the election is won by you and your fellow lithographers. This involves all people on the list.

In regard to the previous election in which some employees voted the union out - how many of those people are around today? The only strength you have is to vote for the union, and maintain a solid unit during negotiations after the election. You, above all people, know what conditions you work under - and the promises that have not been kept.

Think of the wages, vacations, pensions and medical coverages - and of yourself and your families future. Alone you are weak; as a member of the Local One family our strength is your strength. A YES vote for Local One is a vote for yourself.

Sincerely,

Frank Casino

FRANK CASINO

FC:mk:
Encs.

APPENDIX B

September 12, 1974

Dear Fellow Lithographer:

I am sure that since you last heard from me, your employer has been very active in regard to the forthcoming election.

Again I caution you - vote for your own best interests.

Local One members do not have to solicit their own jobs, and when unemployed, journeymen and apprentices receive an unemployment benefit in addition to the State benefit. Our two pension plans are unsurpassed in the industry - many of our older members are currently retiring with pensions that equal their take home pay - with full medical coverage. Our medical coverages are far superior to most company policies - including disability pay when sick and unable to work, plus a prescription drug plan - you pay fifty cents, we pay the rest.

Four weeks vacation, plus a week's sick leave each year. Double time on Saturdays, Sundays, and holidays - double time after the first three hours of overtime Monday through Friday. All of these, and additional benefits, are enjoyed by Local One Members, as outlined in the literature you now have in your possession.

We are going to win this election - a greater margin of victory will help us in negotiating with your employer for the best possible contract.

Unity is the most important thing at this time. When you vote on September 23rd, think of your future - and that includes possible sickness, eventual retirement, as well as working conditions in the immediate future.

APPENDIX C

62

- 2 -

Be in time, follow the agents in instructions in regard
to voting for the union. Know how you vote it - and vote "YES"
for Local One to represent you - giving you a chance at
better life for you and your family.

Sincerely,

Frank Casino

FRANK CASINO
Business Agent

FC:vm

P.S. Don't forget - the Local One School is available at no
charge to members - to increase their knowledge of
literary methods, and so increase their earning power.

APPENDIX C

101 6 28 1933

101 6 28 1933

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEVON LITHOGRAPHERS, INC. AND CAVALIER
MULTICOLOR CORP.

Joint Employers

and

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA,
AFFILIATED WITH INTERNATIONAL TYPOGRAPHICAL
UNION, AFL-CIO

Petitioner

Case No.
29-RC-2731

AFFIDAVIT OF SERVICE OF REPORT ON OBJECTIONS

DATE OF MAILING January 9, 1975

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/certified mail upon the following persons, addressed to them at the following addresses:

Devon Lithographers, Inc.
31-10 Hunters Point Avenue
Long Island City, N.Y. 11101

Cavalier Multicolor Corp.
Att: Ben Rekosh, V.P.
102 Banker Street
Brooklyn, N.Y. 11222

J. Kenneth O'Connor, Esq.
400 Madison Avenue
New York, N.Y. 10017

Local One, Amal. Lithographers
113 University Place
New York, N.Y.

Robinson, Silverman & Pearce
Att: James P. Gill, Esq.
230 Park Avenue
New York, N.Y. 10012

Ruth P. Husband, Esq.
Main Street
Bridgehampton, N.Y. 11932

Subscribed and sworn to before me

this 9 day of January, 1975

Richard Hunt
Designated Agent

NATIONAL LABOR RELATIONS BOARD

HC 8
in rec'd
DPO 879-452

PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1 and 2.
Add your address in the "RETURN TO" space.

1. The following service is requested (check one):
☐ Show to whom and date delivered. 15¢
☐ Show to whom, date, & address of delivery. 35¢
☒ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered. 65¢
☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery. 85¢

2. ARTICLE ADDRESSED TO:
Derek Little

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-643* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *1-10-75* POSTMARK *JAN 10 1975*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

2. ARTICLE ADDRESSED TO:
Carroll Multicol
San Francisco

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-662* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *1/10/75* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery. 85¢

2. ARTICLE ADDRESSED TO:
H. P. Hurland

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-661* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 11 1975* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

64

PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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☒ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered. 65¢
☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery. 85¢

2. ARTICLE ADDRESSED TO:
J. K. Danner

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-658* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *1-10-75* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

2. ARTICLE ADDRESSED TO:
Frank - Mrs. Kelly

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-657* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *1-15-75* POSTMARK *9/51*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

2. ARTICLE ADDRESSED TO:
Robinson, William W.

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *22-660* CERTIFIED NO. INSURED NO.
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]*

4. DATE OF DELIVERY *1-11-75* POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.,

Joint Employers

and

Case No. 29-RC-2731

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

MOTION FOR RECONSIDERATION
AND FOR HEARING

By Report dated January 9, 1975, the Regional Director made his Report and Recommendations on Objections filed by the employer herein to conduct affecting the election in the above representation proceeding.

Based on the material contained herein, and in the accompanying affidavits of Edward Gambella and Hugh P. Husband Jr., the employer respectfully requests the Regional Director to reconsider his report and recommendations as to objection number 3. That objection was that since supervisory employee Henry Aleksiewicz acted as a union observer, in the circumstances of this case, his presence as an observer required setting aside the election.

yc 9
in evid

In support of this motion, the employer submits as follows:

1. The Regional Director's report does not make a clear ruling on the supervisory status of Aleksiewicz, although from the evidence from the already submitted affidavits of Rekosh and Gambella, it is absolutely certain that Aleksiewicz is a supervisor within the meaning of the LMRA. In addition, as pointed out in the accompanying affidavit of Husband, Husband was present at the NLRB investigation at which an agent of the Board questioned Aleksiewicz regarding his status. During that investigation Husband heard Aleksiewicz admit to the Board agent that in the recent past he had unilaterally discharged one employee whose work he was not satisfied with, and make other admissions indicating supervisory status. Therefore, with the evidence so clearly establishing such status, the Regional Director's report and recommendations should have considered and made a definite decision on the supervisory status of this employee.

2. The distinctive factual situation of this case makes Aleksiewicz's supervisory status and impact on his fellow workers of greater import than in the normal situation and requires that the election be set aside because of his participation as the union observer. As is pointed out in the accompanying affidavit of Gambella, Aleksiewicz was and is the sole company representative at the Cavalier Plant, and as such was and is the only managerial or supervisory employee that the employees came in contact with on most days, or even saw. Since no other supervisor or manager was or is at that plant except on rare occasions, Aleksiewicz is and was the sole embodiment of managerial and supervisory power to those employees. As such, his signifying of support for the union by acting as the union's observer gave a clear message to the employees of the Cavalier plant that the only individual who had day-to-day control over their activities supported the union and expected them to support it too.

The weight of the impact of his support of the union on the employees could not be offset by the fact that the management of the employer may have held a meeting with

the employees at which it expressed opposition to a union election victory, for as compared to Aleksiewicz, the company was a vague distant entity that did for the employees what Aleksiewicz told management should be done for them, for the power of control rested in him.

3. The Regional Director's report mistakenly claims on page 7 that both by Gambella's own admissions, it was the employer who withheld from the petitioner the information concerning Aleksiewicz's "supervisory status". This is an absolute error, and since it is not true, there is no basis for the Regional Director to conclude, in effect, "that since the employer was the cause of the problem, the employer shouldn't profit from the situation".

Gambella did inform the petitioner of what Aleksiewicz did, and that material was submitted to the union prior to the election, at the informal conference that resulted in the consent election agreement in this situation. At page 2 of the affidavit submitted to the Board on October, 1974, Mr. Gambella stated, in connection with that informal conference,

"Sometime in the discussion regarding inclusion of various employees within the unit we discussed the status of Henry Aleksiewicz, who does 'lithographic production' work at the Cavalier Multi-color Corp. plant as a pressman and also is manager of that plant and supervises the other employees there. When one of the union representatives asked what he does, I responded that, 'He runs Cavalier', they then asked me, 'Is he a pressman?'. I correctly answered, 'Yes', and the parties agreed to have him in the voting unit. My reason for agreeing to his inclusion was my lack of knowledge of the fact that supervisors within the meaning of the law should not be included in the voting unit."

In light of that statement, there is no basis whatsoever for concluding that the employer "withheld from the petitioner the information concerning Aleksiewicz's supervisory status".

For all the foregoing reasons, the employer respectfully submits that the Regional Director reconsider his previous Report on Objections and take one of the following actions regarding objection Number 3:

(1) Report that Henry Aleksiewicz is a supervisor within the meaning of the LMRA and that in the factual circumstances of this case, and of the Deven-Cavalier operation, his presence as an observer improperly affected the elections results, requiring that said election be

set aside which conclusion the Regional Director would embody in his recommendations to the Board on said objection.

(2) In the alternative, the Employer requests that the reconsideration result in the Regional Director referring Objection Number 3 to a hearing where testimony could be produced, subject to cross examination, as to the supervisory status of the employee in question and as to distinctive factual situation existing at the separate plant at which he is the sole management representative.

Respectfully submitted,

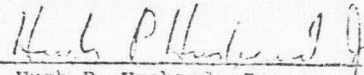
S/ HUGH P. HUSBAND, JR.

Hugh P. Husband, Jr.
Attorney for Employer
Main Street
Bridgehampton, New York 11932

Bridgehampton, New York
January 17, 1975

CERTIFICATE OF SERVICE

I hereby certify that I have, on the 21th day of January, 1975, served the foregoing motion for reconsideration on the parties listed below or their counsel, by placing copies of same in the United States mail, postage prepaid and addressed to such party of counsel.


Hugh P. Husband, Jr.

James F. Gill Esq.
Robinson, Silverman et al
230 Park Avenue
New York, New York 10017
Counsel for Petitioner

CFR 106-115
Jan 18/76

72

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.

Joint Employers

and

Case No. 29-RC-2731

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

Petitioner

ORDER DENYING MOTION FOR RECONSIDERATION AND FOR HEARING

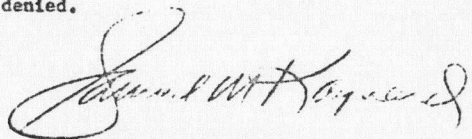
WHEREAS, on January 9, 1975, the undersigned Regional Director issued a Report on Objections in the above-captioned case, wherein it was recommended to the Board that all the objections be overruled; and

WHEREAS, on January 18, 1975, the Employer filed a Motion For Reconsideration and For Hearing directed to Objection No. 3, wherein it requested the undersigned to make a specific finding that Henry Aleksiewicz is a supervisor and to sustain the Objection or, alternatively, to direct a hearing on said Objection;

NOW THEREFORE, the undersigned Regional Director, having duly considered the matter, and having determined that the Employer presented no evidence which had not been submitted and considered before,

IT IS HEREBY ORDERED that the Motion For Reconsideration and For Hearing be, and it hereby is, denied.

DATED: January 24, 1975
at Brooklyn, New York



Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARDDEVON LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.

Joint Employers

and

LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF
AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

Petitioner

Case No. 29-RC-2731

ORDER DENYING MOTION FOR RECONSIDERATION AND FOR HEARING
AFFIDAVIT OF SERVICE OF _____
DATE OF MAILING _____ January 24th 1975

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered/certified mail upon the following persons, addressed to them at the following addresses:

Devon Lithographers, Inc.
31-10 Hunters Point Avenue
Long Island City, N. Y. 11101Cavalier Multicolor Corp.
Att: Ben Rekosh, V. P.
192 Banker Street
Brooklyn, N. Y. 11222J. Kenneth O'Connor, Esq.
400 Madison Avenue
New York, N. Y. 10017Local One, Amal. Lithographers
113 University Place
New York, N. Y.Robinson, Silverman & Pearce
Att: James F. Cill, Esq.
230 Park Avenue
New York, N. Y. 10012Hugh P. Husband, Esq.
Main Street
Bridgehampton, N. Y. 11932Subscribed and sworn to before me
and January 75
this 24th day of _____, 19____

Designated Agent.

NATIONAL LABOR RELATIONS BOARD

H. P. Husband
in evidence

75 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

1. The following service is requested (check one):

- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
Caralini Multicolor

3. ARTICLE DESCRIPTION:
REGISTERED NO. *EW511* CERTIFIED NO. INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 27 1975* POSTMARK *[Postmark]*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS *[Initials]*

• GPO : 1974 O - 527-802

76 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

1. The following service is requested (check one):

- ☐ Show to whom and date delivered..... 15¢
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- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
Dawn Little

3. ARTICLE DESCRIPTION:
REGISTERED NO. *EW500* CERTIFIED NO. INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 21 1975* POSTMARK *[Postmark]*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS *[Initials]*

• GPO : 1974 O - 527-802

77 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

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- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
H. P. Idasland

3. ARTICLE DESCRIPTION:
REGISTERED NO. *EW503* CERTIFIED NO. INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 27 1975* POSTMARK *[Postmark]*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS *[Initials]*

• GPO : 1974 O - 527-802

78 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

1. The following service is requested (check one):

- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
J. K. O'Connor

3. ARTICLE DESCRIPTION:
REGISTERED NO. *EW511* CERTIFIED NO. INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 27 1975* POSTMARK *[Postmark]*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS *[Initials]*

• GPO : 1974 O - 527-802

79 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

1. The following service is requested (check one):

- ☐ Show to whom and date delivered..... 15¢
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- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
Local 1 - Carol Little

3. ARTICLE DESCRIPTION:
REGISTERED NO. *EW503* CERTIFIED NO. INSURED NO.
(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE *[Signature]*

4. DATE OF DELIVERY *JAN 27 1975* POSTMARK *[Postmark]*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS *[Initials]*

• GPO : 1974 O - 527-802

80 Form 3811, Nov. 1973

SENDER: Complete items 1 and 2. Add your address in the "RETURN TO" space reverse.

1. The following service is requested (check one):

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- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 85¢

2. ARTICLE ADDRESSED TO:
Robinson, Robinson

3. ARTICLE DESCRIPTION:
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.,

Joint Employers

and

Case No. 29-RC-2731

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

BRIEF ON BEHALF OF EMPLOYER
IN SUPPORT OF EXCEPTIONS

POINT I

HENRY ALEKSIWICZ IS A
SUPERVISOR AND THE REGIONAL DIRECTOR
SHOULD HAVE SO RULED

On the basis of the affidavits of Rakosh and Gambella,
there can be no question but that Aleksiewicz is a
supervisor, and the affidavit of the employee himself
corroborates this point with inter alia his admission
that he has discharged employees.

In these circumstances, it was an abnegation of
responsibility for the Regional Director to fail to rule
on this crucial issue of the employee's supervisory status,
particularly in light of the distinct relationship between
Aleksiewicz and the other employees under his direction,
as is more explicitly covered under Point II.

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POINT II

THE IMPORTANCE OF ALEKSIEWICZ'S SUPERVISORY
STATUS IS HEIGHTENED BY THE DISTINCTIVE
FACTUAL SITUATION PRESENT HERE

The distinctive factual situation of this case makes Aleksiewicz's supervisory status and impact on his fellow workers of greater import than in the normal situation and requires that the election be set aside because of his participation as the union observer. As is pointed out in Cambella's affidavit accompanying the Motion for Reconsideration, Aleksiewicz was and is the sole company representative at the Cavalier Plant, and as such was and is the only managerial or supervisory employee that the employees came in contact with on most days, or even saw.

Since no other supervisor or manager was or is at that plant except on rare occasions, Aleksiewicz is and was the sole embodiment of managerial and supervisory power to those employees. As such, his signifying of support for the union by acting as the union's observer gave a clear message to the employees of the Cavalier plant that the only individual who had day-to-day control over their activities supported the union and expected them to support it too.

The weight of the impact of his support of the union on the employees could not be offset by the fact that the management of the employer may have held a meeting with the employees at which it expressed opposition to a union election victory, for as compared to Aleksiewicz, the company was a vague distant entity that did for the employees what Aleksiewicz told management should be done for them, for the power of control rested in him.

POINT III

THE DISTINCTIVE FACTUAL SITUATION REQUIRES A DISTINCTIVE APPROACH

Whatever the Board's standards for the normal factory case, a distinctive standard is appropriate for the distinctive situation herein.

Aleksiewicz was the sole representative of management regularly present at the plant; as such he was a supervisor-plus-manager and as such his acting as the union observer had a great significance to the employees participating in the election. In these circumstances the only way of maintaining the "laboratory conditions" standard is to set the election aside because that supervisor acted as an observer.

CONCLUSION

It is respectfully submitted that the Board should:

(1) decide that the election of September 23, 1974 be set aside because of Aleksiewicz's presence there as the union observer, or, in the alternative (2) order a hearing on the issues of Aleksiewicz's status and the impact of his presence as an observer on the employees participating in that election.

Respectfully submitted,

Hugh P. Husbani, Jr.
Attorney for Employers
Main Street
Bridgehampton, New York 11932

Dated: February 1, 1975
Bridgehampton, NY 11932

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DEVEN LITHOGRAPHERS, INC. and
CAVALIER MULTICOLOR CORPORATION

Joint Employers

and

Case 79-FD-2731

LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, affiliated with INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to authority granted in under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on September 23, 1974, and the Regional Director's Report recommending disposition of same. The Board has reviewed the record in light of the exceptions and hereby adopts the Regional Director's findings and recommendation.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local One, Amalgamated Lithographers of America, affiliated with International Typographical Union, AFL-CIO, and that, pursuant to

- 1/ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 16 for, and 7 against, the Petitioner; there were 3 challenged ballots, an insufficient number to affect the results.
- 2/ In our opinion, the Employer's exceptions raise no material or substantial issues of fact or law which would justify reversing the Regional Director's findings or require a hearing.

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Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All lithographic production employees including engravers, plate-makers, strippers, pressmen, operators, tenders and general lithographic helpers employed by the Employer at its places of business located at 31-10 Hunters Point Avenue, Long Island City, New York, and 192 Barker Street, Brooklyn, New York; excluding all office clerical employees, sales employees, guards, watchmen and supervisors as defined in the Act.

Dated, Washington, D.C., June 6, 1975.

Betty Southern Marshy, Chairman

Howard Jenkins, Jr., Member

Ralph E. Anthony, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

61
UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARDDEVEN LITHOGRAPHERS, INC. AND
CAVALIER MULTICOLOR CORP.

Joint Employer

and
LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO

Petitioner

Date Filed

Case No. 29-RC-2731

8/12/74

Date issued SEPTEMBER 23, 1974

Type of Election:

(Check one):

☒ Stipulation☐ Board Direction☐ Consent Agreement☐ RD Direction

Incumbent Union (Code)

(If applicable
check either
or both:)☐ 8(b) (7)☐ Mail Ballot

None

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 27
2. Void ballots 0
3. Votes cast for LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF AMERICA, AFFILIATED WITH INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO 16
4. ~~None~~
5. ~~None~~
6. Votes cast against participating labor organization(s) 7
7. Valid votes counted (sum of 3, 4, 5, and 6) 23
8. Challenged ballots 3
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 26
10. Challenges are (not) sufficient to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for:

Local 1, Amalgamated Lithographers of America, ITU, AFL-CIO

For the Regional Director

Jack D. Eisenberg

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For DEVEN LITHOGRAPHERS, INC. and
CAVALIER MULTICOLOR CORP.[Signature]

For

For LOCAL ONE, AMALGAMATED LITHOGRAPHERS
OF AMERICA, AFFILIATED WITH INTERNATIONAL
TYPOGRAPHICAL UNION, AFL-CIO[Signature]

For

AC 15
in evid.

G.C. Exhibit 146
7/18/76 (62

ROBINSON, SILVERMAN, PEARCE, ARONSOHN, SAND & BERMAN
230 PARK AVENUE
NEW YORK, N.Y. 10017

BENJAMIN M. ROBINSON
MATTHEW SILVERMAN
SAUL PEARCE
ALAN J. ARONSOHN
LEONARD S. SAND
LAURENCE A. SPELMAN
STANLEY BERMAN
EDWIN D. CALLAHAN
EDWARD S. SCHONEN
JAMES F. GILL
JERROLD J. FINGER
MICHAEL N. ROSEN
CHARLES H. KOTICK
ARTHUR W. BRILL
ALAN S. PEARCE
SUMNER S. BERMAN
STEVEN M. GOLDMAN
ANDREW S. BERMAN
ZVI WILANDOWSKY
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(212) MU 9-7766
CABLE "ROSILPE"

WASHINGTON OFFICE
910 16TH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 296-7272
MEMBER WASHINGTON, D.C.
BAR ONLY

October 11, 1974

Mr. Samuel M. Kaynard, Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

Attn: Jack D. Eisenberg, Esq.

Re: Deven Lithographers, Inc. d/b/a
Cavalier Multicolor Corp.
Case No. 29-RC-2731

Gentlemen:

As you are aware, we represent Local One, Amalgamated Lithographers of America. This is an answer to the employer's objections with respect to the election which was held on September 23, 1974.

The employer objects to the conduct of the election on the grounds that non lithographic production employees as well as supervisors were permitted to vote. On August 27, 1974 a pre-election conference was held at your offices. The agent assigned to the case was Mr. Jack D. Eisenberg. Mr. Edward Gambella, the President of the above named companies attended the conference with an attorney by the name of J. Kenneth O'Connor. On that occasion the company and the union entered into a stipulation for a consent election, a copy of which is attached hereto as Exhibit "A". After extended consultation with Mr. O'Connor, the employer proposed a list of employees eligible to vote. Mr. Gambella represented that each and every employee on the list was a lithographic production employee. He also represented that no employee on the

list was a supervisor within the meaning of the Act. The stipulation with respect to eligibility was written out in longhand by Mr. O'Connor and executed by Mr. Gambella. Local One accepted the representations made by Mr. Gambella and Frank Casino executed the stipulation on behalf of Local One. A copy of the aforementioned stipulation is attached hereto as Exhibit "B".

Thereafter, on August 29, 1974, the company prepared and forwarded to the Regional Director an excelsior list which set forth the very same names set forth on Exhibit "B". A copy of the excelsior list is attached as Exhibit "C". The election was held on September 23, 1974. Sixteen votes were cast in favor of Local One, seven votes were cast for no union and three ballots were challenged by Local One. The employer now objects to the conduct of the election on the grounds that some of the employees, the names of whom appeared on the stipulation of eligibility proposed by the company and on the company's excelsior list were, in fact, non lithographic employees while others were supervisors within the meaning of the Act. Implicit in the foregoing is an admission that the employer deceived and misled the Board at the time of the pre-election conference and that it attempted to "stack the deck" in its favor by loading the eligibility list with supervisors and non lithographic production employees. Now that its improper effort has failed it seeks to set aside the election on the basis of its own misconduct!

The employer's objection on the grounds that one of the company's supervisors acted as a union observer is equally ludicrous. The fact of the matter is that the observer in question was not selected by either the union or the employer but simply volunteered his services. To this day the union has no evidence indicating that the individual in question is in fact a supervisor. To the best knowledge of the union, the individual who volunteered to serve as a union observer is a lithographic pressman. At the time he volunteered Mr. Gambella was present and raised no objection. If, in fact, he is a supervisor the only party in a position to complain is the union and it does not.

Local One denies that the National Labor Relations Board agent in charge of the election misled any observers in any way, shape or form. It also denies that the National Labor Relations Board agent in charge of conducting the election left a ballot box unattended so as to render the ballot box "susceptible to being tampered with by others".

Additionally, Local One denies that it made any misrepresentations either oral or in writing at any time prior to

the election.

The objections raised by the company are so absurd and lacking in merit that it is clear to us that they are nothing more than a ploy to enable the employer to delay and forestall its duty to bargain with Local One in good faith. We are hopeful that the Board will not become an unwitting party to this effort and that this matter will be handled expeditiously.

Finally, the filing of these objections makes it clear that what is involved here is not merely an abuse of the Board and its processes but that a violation of §1001, Title 18 of the United States Code might have occurred.

Very truly yours,

James F. Gill
JAMES F. GILL

JFG:sg
Enclosures

c.c. Messrs. Edward Swayduck
Edward Hansen
Frank Casino
Edward Cambella
Hugh Husband

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

-----X

In the Matter of: :

DEVEN LITHOGRAPHERS, INC. and :
CAVALIER MULTICOLOR CORP., :

-and-

: Case No.
29-CA-4555LOCAL ONE, AMALGAMATED LITHOGRAPHERS OF :
AMERICA :

-----X

16 Court Street
Brooklyn, New York
January 8, 1976The above entitled matter came on for hearing,
pursuant to Notice at 10:50 A.M.

BEFORE:

MELVIN J. WEISS, Administrative Law Judge

APPEARANCES:

G. PETER CLARK, ESQ. 16 Court Street, Brooklyn, New
York, on behalf of the General
Counsel.HUGH P. HUSBAND, JR., ESQ. Main Street, Bridgehampton,
New York, 11932 appearing on
behalf of the Respondents.FRANK J. CASINO, JR. Vice President, Local One, 113
University Place, New York,
New York 10003.

66
I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOIR DIRE</u>
FRANK CASINO	20	27	
HENRY C. ALEKSIEWICZ	28	38	
DONALD KULBERG	117		121

E X H I B I T S

GENERAL COUNSEL'S
EXHIBITS:

FOR IDENTIFICATION IN EVIDENCE

1		4
2 to 14	15	19
15	17	19
16	18	19

RESPONDENT'S EXHIBITS:

1 and 2	4	
3 to 14	119	124
15	124	127

P R O C E E D I N G S

JUDGE WELLES: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Deven Lithographers, Inc. and Cavalier Multicolor Corp., case number 29-CA-4555.

I am Melvin J. Welles, the Administrative Law Judge conducting this hearing.

Will the parties please state their appearances for the record.

MR. CLARK: For the General Counsel, first initial G. Peter Clark, National Labor Relations Board, Region 29, 16 Court Street, Brooklyn, New York 11241.

MR. HUSBAND: For the Respondents, Hugh P. Husband, Jr., Main Street, Bridgehampton, Long Island, New York 11932.

MR. CASINO: For Charging Party, Frank J. Casino, Jr. Local One, Amalgamated Lithographers of America, 113 University Place, 10003, New York City.

JUDGE WELLES: Would you like to introduce the formal papers at this point?

MR. CLARK: Yes, your Honor.

At this time I would like to offer General Counsel's Exhibit 1, being items 1A to 1F inclusive, the formal papers in this proceeding.

The parties have been shown the formal Exhibit 1

1 previously and all have been provided with copies of the
2 index and a description of the formal papers, that being
3 Exhibit 1F.

4 JUDGE WELLES: I take it you have no objection?

5 MR. HUSBAND: No objection, your Honor, but I have a
6 motion that I would like to make after it is admitted.

7 JUDGE WELLES: All right, General Counsel's Exhibit 1
8 is received.

9 (Whereupon, documents above described
10 received in evidence as General
11 Counsel's Exhibit 1, of this date.)

12 MR. HUSBAND: Your Honor, I have a motion, and in
13 connection with that motion I have a couple of Exhibits
14 which I would like to have marked for identification.

15 JUDGE WELLES: All right, fine.

16 MR. HUSBAND: I request the Reporter to mark these
17 for identification as Respondent's Exhibits 1 and 2.

18 (Whereupon, documents referred to
19 were marked respectively as
20 Respondent's Exhibit 1 and 2 for
21 identification, of this date.)

22 MR. HUSBAND: Your Honor, at this time the Respondents
23 would like to make a motion, if I may first give a little
24 background.

25 On December 22, 1975, under the Freedom of Information
Act the Respondents, through myself, wrote to the Regional
Director, requesting copies of all written statements of

1 I therefore really see no prejudice as a practical matter
2 in going ahead, and I can see no prejudice, there is an
3 85 allegation and there is an 83 allegation to be delayed
4 for a month and a half.

5 If I thought that your request was one that the
6 General Counsel might rule favorably on I would feel
7 differently, but the chances of that, as you probably know
8 yourself, are nil.

9 I will deny the request for a postponement.

10 Are there any other motions?

11 Go ahead and make an opening statement.

12 MR. CLARK: There may be motions, your Honor, but I
13 think it will be more appropriate following the nature of
14 the evidentiary stipulation and I have no preliminary
15 motions at this point.

16 If I may have a moment, your Honor.

17 I am ready, your Honor.

18 JUDGE WELLES: Go ahead.

19 MR. CLARK: Your Honor, Deven Lithographers, Inc. and
20 Cavalier Multicolor Corp. are two operations with the same
21 single employer engaged in lithographic work in the print-
22 ing industry.

23 Deven operates the one print shop in Long Island
24 City, New York, and Cavalier is a shop operating in Brooklyn,
25

1 New York.

2 This case originated in organizing efforts by Local
3 One, culminating in the filing of a petition in this case,
4 number 29-RC-4555 for Local One to represent all
5 lithographic production workers at the Deven and Cavalier
6 shops.

7 An election was held in that unit on September 23,
8 1974 and Local One prevailed in that election.

9 Henry C. Aleksiewicz served as the observer for Local
10 One in that election at the Cavalier shop polling place.

11 Following further proceedings the Board issued a
12 certification of representation in that R case on June 6,
13 1975.

14 After receiving the certification of June, 1975
15 Local One made numerous attempts to contact Respondent's
16 president, Edward P. Gambello.

17 Numerous telephone calls were not replied to by
18 Gambello.

19 On only two occasions during the months of June, July
20 and August did Gambello deign to speak with the union.

21 On the first such occasion Gambello spoke to Frank
22 Casino, a representative of Local One.

23 That occasion was June 16, 1975 and said that
24 Respondent would do nothing until it consulted with its
25 attorney.

1 On the second occasion, August 14th, Gambello told
2 Casino that he had in an earlier call referred Casino to
3 Respondent's attorney.

4 Casino denied this but agreed to call the attorney
5 in any event.

6 On the 15th Casino was able to reach the attorney
7 and was told that the attorney was not familiar with the
8 recent events.

9 The attorney stated he would contact Casino no later
10 than Friday, August 22nd to set a time for negotiations
11 to begin.

12 On August 25th not having heard from the attorney
13 Mr. Casino called the attorney and was first informed
14 that the Respondent, prior to its earlier representations,
15 intended not to negotiate with the Union and to litigate,
16 to further litigate the validity of the certification in
17 the R case, and obviously litigate through some unfair
18 labor practice case.

19 Skipping back a moment, your Honor, the telephone
20 call on August 25th was the last material contact between
21 the Employer and the Union in this matter.

22 As we said, Henry Aleksiewicz served as the Union's
23 observer in the September, 1974 election.

24 In January of 1975 he was promoted to a managerial
25 position, and in July of 1975 he returned, at his own

1 insistence to rank and file production work as a pressman
2 and again in a Cavalier shop.

3 He returned actually to work in early August as a
4 production worker, in early August, 1975, and within a week
5 or two thereafter expressed great interest in Local One
6 as a bargaining representative through the employer's fore-
7 man in the Cavalier shop, one Jess Claxon.

8 Within a week or two after that expression of renewed
9 interest Mr. Aleksiewicz was fired for no plausible reason
10 and has not been reinstated by the Respondent.

11 That discharge occurred on or about August 19,
12 1975.

13 It is our contention, your Honor, that the proof will
14 clearly show that the Employer has not only engaged in
15 refusal to bargain for purposes of testing this certifica-
16 tion, but prior to that decision engaged in dilatory and
17 evasive tactics throughout the months of June, July and
18 August which was designed to undermine the majority status
19 of Local One as the bargaining representative, and to
20 evade the Employer's duty to bargain with Local One.

21 It therefore, somewhat belatedly it appears, decided
22 that it could test the certification in the R case by
23 expressly refusing to bargain and did so on August 25th.

24 Those events occurred and culminated at the same
25 time in the discharge of Mr. Aleksiewicz who was the

1 observer at the Cavalier polling place and when returned
2 there as a pressman, expressed renewed interest in a union
3 with which the Employer intended not to bargain.
4

5 So we contend, your Honor, that the events of June,
6 July and August, 1975 constitute in essence two violations,
7 a violation of Section 8A5 and a violation of Section 8A3
8 of the National Labor Relations Act.

9 JUDGE WELLES: Does the second violation of 8A3
10 stand or fall on the validity of the certification?

11 MR. CLARK: Of course it does, your Honor.

12 The duty to bargain arises out of that certification.

13 JUDGE WELLES: Except for its bearing on the 8A3
14 allegation you are not adding anything to the case?

15 MR. CLARK: Well --

16 JUDGE WELLES: The remedy would be the same, would
17 it not?

18 MR. CLARK: I believe the remedy might be a bit more
19 specific as to the evasive acts and dilatory tactics as
20 well as a refusal to bargain, so I think the remedy would
21 be somewhat different, our second theory would be something
22 additional if our theory of the 8A5 were to be found to be
23 valid.

24 So I would not want to abandon the second theory at
25 this stage.

1 Whether or not the evidence sustains that view, it is
2 of course, another matter, but we believe the remedy would
3 be somewhat different and is an important consideration in
4 this matter.

5 JUDGE WELLES: What is the nature of the challenge
6 to this certification?

7 I perhaps could ask Mr. Husband if you don't know.

8 MR. CLARK: I believe the only objection asserted to
9 the Board in this review of the case was that Mr. Aleksiewicz
10 was a supervisor employee at the time of the September,
11 1974 election and his service as a union observer was
12 objectionable.

13 That objection was overruled by the Regional Director
14 and the Regional Director's decision was adopted in full
15 by the Board without further comment.

16 I would caution that regardless of Mr. Aleksiewicz'
17 status in September, 1974 which I do not concede to be one
18 of a supervisor, he was clearly not a supervisor in August
19 of 1975.

20 So that regardless of the SA5 allegation, the SA3
21 allegation stands alone and on its own.

22 JUDGE WELLES: One more question.

23 If he was a supervisor in September of '74, would
24 that have been sufficient to void the election?

25 MR. CLARK: No, your Honor.

1 It is the position of the Regional Director, as I
2 understand the record in the R case, that that would not
3 come under the circumstances of that case, the circumstances
4 of that election, being enough to invalidate the election
5 and the certification, but again, I cannot concede and I
6 don't intend to concede that he was a supervisor.

7 JUDGE WELLES: Do you wish to make any statement at
8 this point?

9 MR. HUSBAND: Not at this point.

10 JUDGE WELLES: All right.

11 MR. CLARK: Your Honor, Mr. Husband and I have previously
12 discussed the possibility of stipulating into the record
13 documents from the R case which I believe are important to
14 all sides in this matter.

15 It is my understanding and is my understanding, correct
16 Mr. Husband, that at least we have that process?

17 MR. HUSBAND: Yes, I would like to look at that.

18 MR. CLARK: Yes, I know you haven't seen them, but
19 it would be worthwhile to --

20 JUDGE WELLES: We will take a few minutes.

21 MR. CLARK: Yes, we could.

22 JUDGE WELLES: We will take a five minute break.

23 (Short recess taken.)

24 JUDGE WELLES: On the record.

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MR. CLARK: Your Honor, I would like to propose a stipulation to introduce into evidence the record of Case number 29-RC-2731, the representation case which preceded and that of which this unfair labor proceeding case arises.

There are numerous documents which we can take seriatim and just mark them all or introduce them as a group or mark them individually.

I suggest individually because we are going to get confused in a hurry, because I'm still not sure what is here.

We will introduce that as Petitioner's, General Counsel 1 or Joint 1, however you want, General Counsel 2 or Joint 1, however you want to do it.

Before we go to the next one, I would propose to put in each of the Exhibits individually.

I assume that is satisfactory.

JUDGE WELLES: All right.

MR. CLARK: Do you have any objection?

MR. HUSBAND: Either way, Joint or G.C.

MR. CLARK: General Counsel's 2 will be the petition in case number 29-RC-2731 filed August 12, 1974.

(Whereupon, documents hereinabove described marked respectively, General Counsel's Exhibits 2 through 14 inclusive for identification, of this date.)

1 JUDGE WELLES: Do they not speak for themselves
2 what they are without a description?

3 MR. CLARK: They do speak for themselves, but we want
4 to make it clear in the record.

5 JUDGE WELLES: All right.

6 MR. CLARK: Just the title.

7 It won't be substantial.

8 General Counsel's 2 is a petition in case number
9 29-RC-2731, filed August 12, 1974.

10 General Counsel's Exhibit 3 is a stipulation for
11 certification upon consent election in case number 29-RC-
12 2731.

13 General Counsel's Exhibit 4 is the Norris-Thermador
14 stipulation in fact in case number 29-RC-2731, although the
15 case number does not in fact appear on the stipulation.

16 General Counsel's Exhibit 5 is the certification and
17 conduct of election in case number 29-RC-2731.

18 General Counsel's Exhibit 6 is the letter containing
19 objections of the Employer to conduct effecting election,
20 in case number 29-RC-2731.

21 General Counsel's Exhibit 7 is the report on objections
22 of the Regional Director in case number 29-RC-2731.

23 General Counsel's Exhibit 8 is the affidavit of
24 service of the report on objections in case number 29-RC-
25 2731.

1 General Counsel's Exhibit 9 is the Employer's
2 motion for reconsideration and for hearing directed to the
3 Regional Director in case number 29-RC-2731.

4 General Counsel's Exhibit 10 is the order denying
5 motion for reconsideration and for hearing in case number
6 29-RC-2731, issued by the Regional Director.

7 General Counsel's Exhibit 11 is the affidavit of
8 service of the order denying motion for reconsideration for
9 hearing in case number 29-RC-2731.

10 General Counsel's Exhibit 12 is the Employer's
11 exceptions to the Regional Director's report and recommenda-
12 tions and to Regional Director's order denying motion for
13 reconsideration and for hearing in case number 29-RC-2731.

14 General Counsel's Exhibit 13 is the brief on behalf
15 of Employer in support of exceptions in case number 29-RC-
16 2731.

17 General Counsel's Exhibit 14 is the stipulation and
18 certification of representation issued by the National
19 Labor Relations Board on June 6, 1975 in case number
20 29-RC-2731.

21 Although out of chronology sequence, General Counsel's
22 Exhibit 15 will be the tally of ballots issued in case
23 number 29-RC-2731.

24 (Whereupon, document referred to
25 marked General Counsel's Exhibit
15 for identification, of this date.)

1 MR. CLARK: May I have just a moment, your Honor.

2 JUDGE WELLES: Yes.

3 MR. CLARK: Your Honor, one document was omitted in
4 preparation of that pile of documents and that would be the
5 Union's reply to the Employer's objections, and I would,
6 although four copies are not prepared at this time, I
7 would propose to add this to the stipulation as General
8 Counsel's Exhibit 16, your Honor.

9 MR. HUSBAND: This is fine, but the Exhibit he has,
10 the letter you already have anyway and this is duplicating.

11 MR. CLARK: Counsel's point, with the exception of the
12 standard form letter from the Regional Director requesting
13 the excelsior list which is the same in every case, all
14 the Exhibits are appended by the counsel to the Union to
15 the objections, to its response to the Employer's objections
16 and are in fact included somewhere else in it.

17 JUDGE WELLES: You want just to attach the part
18 you want in the letter?

19 MR. CLARK: Just the letter itself which really would
20 be material.

21 JUDGE WELLES: 16 will be just the letter?

22 MR. CLARK: Right, and I will supply copies to the
23 parties as soon as I can.

24 (Whereupon, document referred to
25 was marked General Counsel's Exhibit
16 for identification, of this date.)

1 MR. CLARK: I take it there is no objection to 16?

2 MR. HUSBAND: No.

3 JUDGE WELLES: General Counsel's Exhibit 2 through
4 16 are received in evidence.

5 (Whereupon, General Counsel's
6 Exhibits 2 through 16 inclusive,
7 heretofore marked for identification,
8 received into evidence, of this date.

9 MR. CLARK: May we go off the record again briefly,
10 your Honor?

11 JUDGE WELLES: Off the record.

12 (Discussion off the record.)

13 JUDGE WELLES: On the record.

14 MR. CLARK: Your Honor, I propose a further stipulation,
15 that in August of 1975 the Respondent Employer stated to
16 a representative of Local One, Amalgamated Lithographers of
17 America, the Charging Party herein, that the Respondent
18 refused to bargain with Local One and intended to litigate
19 further the validity of the certification issued by the
20 National Labor Relations Board in case number 29-RC-2731.

21 The particular date, the precise date in the month of
22 August, 1975 cannot now be determined to the satisfaction
23 of the parties.

24 JUDGE WELLES: Is that satisfactory, Mr. Husband?

25 MR. HUSBAND: Yes.

JUDGE WELLES: The stipulation is accepted.

1 MR. CLARK: I believe, your Honor, I am prepared to
2 present a witness.

3 Your Honor, I will call Frank Casino.
4 Whereupon,

5 FRANK CASINO, JR.
6 called as a witness, having been first duly sworn in by
7 Judge Welles, was examined and testified as follows:

8 JUDGE WELLES: Please be seated and give your name
9 and address to the Reporter.

10 THE WITNESS: Frank Casino, Vice-President, care of
11 Amalgamated Lithographers of America, Local One, 113
12 University Place, New York City 10003.

13 DIRECT EXAMINATION

14 Q (By Mr. Clark) Mr. Casino, by whom are you employed?

15 A I am employed by Local One, Amalgamated Lithographers
16 of America.

17 Q What is your position with Local One?

18 A Vice President.

19 Q How long have you held that position?

20 A I have been a Vice President since November of 1975.
21 Prior to that I was a business agent, prior to June
22 1st of 1970.

23 Q Are you familiar with Deven Lithographers, Inc. and
24 Cavalier Multicolor Corp. the Respondents in this case?

25 A Yes, I am.

1 Q How are you familiar with Respondents?

2 A My organizing efforts in their shops.

3 Q When did those organizing efforts take place?

4 A Oh, commencing sometime in 1972, early '73.

5 Q When did those organizing efforts culminate?

6 A They culminated when we filed a petition for
7 representation, which, I believe, was August of 1974.

8 Q Was an election held as a result of the filing of
9 that petition?

10 A Yes, sir.

11 Q When was that?

12 A September 23, 1974.

13 Q Was there a polling place at the Cavalier shop?

14 A Yes, there was.

15 Q Did the Union have an observer at that location?

16 A Yes, had Mr. Henry Aleksiewicz as the union observer.

17 Q How did Mr. Aleksiewicz come to be the observer at
18 that poll?

19 A By the time we reached the polling place I had
20 appointed no observer and I got the people together, the
21 eligible voters that were assembled in the press room.

22 The press was shut down and I asked for a volunteer
23 to act as an observer for the Union to follow my instructions
24 and the instructions of the Board agent, because I didn't
25 want to appoint anyone if I could get a volunteer.

1 There was a pause for quite a few minutes and after
2 that few minutes Mr. Aleksiewicz said, well, if nobody
3 else will do it I will be an observer, and he was then
4 designated as the observer.

5 Q Did Mr. Aleksiewicz act as an observer?

6 A Yes, he did.

7 Q When you were talking to the workers who you were
8 asking to volunteer was anyone else present in the area?

9 A Well, within earshot I believe was the Board agent
10 and the observer for -- a young lady was the observer
11 for the company and Mr. Gambello, I believe, was there and
12 myself and the people who were eligible to vote.

13 Q You saw those people in the area as you were doing
14 this?

15 A Yes, they were visible, certainly.

16 Q Did the Board issue a certification in that
17 representation case?

18 A Yes, sir, certification was finally dated June 6,
19 1975.

20 Q When did you receive or learn of that certification?

21 A June 9th. I believe the day of the 6th and I
22 received it on the 9th.

23 Q What if anything did you do upon learning of the
24 certification?

25 A The following day I called Mr. Gambello's company.

1 I have to refer to my dates here.

2 That was on June the 10th.

3 Q What was the result of that phone call?

4 A Well, I spoke with the young lady on the switchboard.

5 He was busy on the phone and the first time that he
6 called back would be about oh -- he was to call me back
7 about 2:30.

8 Then I called at 2:30 and was told that Mr. Gambello
9 had left.

10 I had to try him the next morning at about 10:30.

11 Q What did you do after that?

12 A On the 11th which was the next morning, I called about
13 11:00 o'clock and Mr. Gambello was not in and I asked to
14 have the call returned, left my name and phone number and
15 that was it.

16 Q Following the 11th what did you do?

17 A I called again on the 13th, about 11 in the morning
18 and Mr. Gambello again was not in.

19 I asked for him to return the call and I received no
20 call.

21 Q Following the 13th what did you do?

22 A On the 16th I called again and Mr. Gambello was not
23 in.

24 I asked to have him call me and I received no call.
25

1 Q Following the 16th what did you do?

2 A That was the 16th.

3 The 19th was the next time.

4 Q Following June 16th what did you do?

5 A I called on the 19th at about 10:30 in the morning.
6 Mr. Gambello was not in.

7 I left a message about returning the call, and Mr.
8 Gambello returned the call about two hours later and--

9 MR. HUSBAND: What date was that?

10 MR. CLARK: The last one? June 19th.

11 A (Continuing) June 19th, and in the course of the
12 conversation I asked Mr. Gambello if we could sit down and
13 sort of clear the air and, if I recall correctly his
14 retort was something to the effect that his air was clear,
15 something wrong with mine and had nothing to do with him.

16 He then said he wouldn't talk about anything until
17 he spoke with his attorney.

18 Q Following June 19th what did you do?

19 A I next called July 9th.

20 Mr. Gambello was not in and he was not expected and
21 the young lady at the switchboard did not know if he
22 would be in the next day and left a message and phone
23 number and asked him to call.

24 Q Following July 9th what did you do?

25 A On July 14th I called at about 11:30 in the morning

1 and left the usual message, my number and the young lady
2 had said he was due in in the early afternoon and I did
3 not receive a call that day.

4 Q Following July 14th what did you do?

5 A I called on July 23rd about 2:30 and the young lady
6 said he was expected in later in the afternoon, left a
7 message requesting return call and received no call.

8 Q Following July 23rd what did you do?

9 What next did you do?

10 A I called on August 11th, my secretary dialed the
11 number and I spoke and Mr. Gambello was expected in and I
12 asked him too again call back and I received no call.

13 Q Following August 11th what did you do?

14 A Called on August 14th about 11:00 in the morning
15 and I spoke to Mr. Gambello and Mr. Gambello -- the gist
16 of the conversation was that Mr. Gambello said, "I thought
17 I told you to contact my attorney".

18 I told him that at the previous -- at our previous
19 conversation he had said he wanted to contact his attorney
20 but, in any event, I said, I would contact his attorney
21 Mr. Husband.

22 Q Following that call on August 14th what did you next
23 do?

24 A On the same day, August 14th, I called Mr. Husband.

25 He was not in his office and I left a message.

1 Q Following the 14th what then did you do?

2 A I called on August 15th.

3 I called Mr. Husband's New York City number and
4 was given a Long Island number where he could be reached.

5 On the same day, August 15th I called and I spoke
6 with Mr. Husband and Mr. Husband said he hadn't spoken to
7 his client and he will get to his client and will call me
8 back, call by August 22nd, which was the following week,
9 to set up an appointment.

10 Q Following that call of August 15th, when did you next
11 hear from Mr. Husband?

12 A Well, I waited until the 22nd, which was, I believe,
13 a Friday, and I received no calls, so I called Mr. Husband
14 following -- the following Monday, which was August 25th.

15 Mr. Husband was either not in or they had to get to
16 him, and he called me back about an hour and a half, two
17 hours later and said, Mr. Gambello wanted to go into
18 further litigation on the whole matter and therefore we
19 would talk about it.

20 Q I'm sorry, what was that last part?

21 A And therefore there was no conversation to be held
22 pending further litigation.

23 Q By conversation you mean to be held, you mean --

24 A Negotiation conversation, there wouldn't be any
25 point in doing that.

1 I have just a skeleton here of the situation.

2 MR. HUSBAND: I have no further questions.

3 MR. CLARK: Nothing further.

4 JUDGE WELLES: Thank you, Mr. Casino.

5 (Witness excused.)

6 MR. CLARK: I will call Mr. Henry Aleksiewicz, your
7 Honor.

8 MR. HUSBAND: Excuse me, before we do that --

9 JUDGE WELLES: Off the record.

10 (Discussion off the record.)

11 JUDGE WELLES: On the record.

12 Whereupon,

13 HENRY C. ALEKSIEWICZ

14 called as a witness, having been first duly sworn in by
15 Judge Welles, was examined and testified as follows:

16 JUDGE WELLES: Be seated and give your name and address
17 to the Reporter.

18 THE WITNESS: My name is Henry Aleksiewicz, 23-26
19 Hampton Avenue, Seaford, Long Island.

20 DIRECT EXAMINATION

21 Q (By Mr. Clark) Mr. Aleksiewicz, were you ever
22 employed by Deven Lithographers, Inc.?

23 A Yes, I was.

24 Q When was that?

25 A When was that? When did I start?

1 Q Since that last call of August 25th had you had any
2 further contact with the company, with Respondents, concern-
3 ing negotiations?

4 A No sir, I have not.

5 MR. CLARK: I have no further questions, your Honor.

6 CROSS EXAMINATION

7 Q (By Mr. Husband) Mr. Casino, on August 14th when
8 you spoke with Mr. Gambello he said he told you, that he
9 thought that he had told you to contact his attorney,
10 correct?

11 A That is what he said.

12 Q In that period from June 19th to August 14th you
13 hadn't contacted his attorney, had you?

14 A No sir, I had not, because my recollection --

15 Q Your recollection --

16 A -- our conversation was different than Mr. Gambello's.

17 Q So there was a misunderstanding?

18 A Evidentially.

19 MR. CLARK: Objection, your Honor.

20 JUDGE WELLES: Sustained.

21 Q On August 25th when I returned your call did I
22 apologize to you for not getting back to you by the 22nd?

23 A Oh yes, sir.

24 Q Do you recall the reason I gave?

25 A No, I don't offhand.

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- 1 Q Yes.
- 2 A I started about '66 or '65.
- 3 Q How long did you work for the Respondent Deven?
- 4 A Roughly about 8, 9 years.
- 5 Q When did that end?
- 6 A August of 1975.
- 7 Q What was your first job with the Respondent, with
- 8 Deven?
- 9 A I became a pressman, went to work and became a
- 10 pressman.
- 11 Q At what location did you work?
- 12 A Long Island City.
- 13 Q Did you come to work at another location?
- 14 A I did.
- 15 Q What location was that?
- 16 A Cavalier Multicolor in Brooklyn.
- 17 Q When did that come about?
- 18 A '70 or '71.
- 19 Q Did you continue doing the same kind of work at
- 20 Cavalier as you had at Deven?
- 21 A Yes, as pressman.
- 22 Q During that time at Cavalier did your work change
- 23 in anyway?
- 24 A No, not really.
- 25 I ordered parts, stuff like that.

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1 Q Was there any change in your employment in January of
2 1975?

3 A January '75?

4 Q Yes.

5 A Yes, I became management.

6 Q How long did you continue in that position?

7 A Until August, early August.

8 Q Of what year?

9 A Of 1975.

10 Q What happened in August of 1975?

11 A I got fired.

12 Q Prior to that?

13 A Oh, I went back to the press.

14 I asked to go back to become a pressman.

15 Q You requested the change from management employee to
16 working on the press?

17 A I did.

18 Q At the time you returned to working on the press in
19 August of 1975 who was in charge of the shop?

20 A Jeff Claxon.

21 Q What did he do, what was his position?

22 A He was a management foreman.

23 Q How long did Claxon continue in that position?

24 A How long did he continue?

25 Q Yes, that you know of?

1 A As far as I know he is still there.

2 Q You testified, you mentioned that you were fired in
3 August, 1975.

4 Was Claxon still the foreman at the time you were
5 fired?

6 A Yes.

7 Q Now, in September, 1974, did you come to have any
8 contact with Local One, Amalgamated Lithographers of
9 America?

10 A Yes.

11 Q What did you do?

12 A Excuse me?

13 Q What did you do, what contact did you have?

14 A They offered me a union book and I accepted.

15 Q You became a member of Local One?

16 A Right.

17 Q Did you have any further activities with Local One
18 in that month?

19 A No.

20 Q Did the National Labor Relations Board conduct an
21 election at Cavalier?

22 A Yes, they did.

23 Q Did you have any part in that election?

24 A Yes, I was an observer.

25 Q For whom were you an observer?

1 A For the Union.

2 Q How did you come to be designated as an observer?

3 A Well, Frank Casino asked for somebody to be an
4 observer.

5 After waiting half a minute or more nobody gave no
6 answer and finally I said I would do it.

7 Q Where were you at this time?

8 A By the press, in the press room.

9 Q At the Cavalier shop?

10 A Yes.

11 Q Who was present in that area?

12 A Just about everybody.

13 Q Who is everybody?

14 A People on the press.

15 I believe Ed Gambello and Millie and so forth.

16 Q Who is Ed Gambello?

17 A Ed Gambello is the boss, he owns the company.

18 Q Who is Millie?

19 A Millie was his bookkeeper.

20 Q Did she have a particular reason for being present
21 at that time on that day?

22 A Well, after I found out she was a company observer.

23 Q For the election?

24 A Right.

25 Q Mr. Aleksiewicz, directing your attention to the

1 second week of August, 1975 did you have a conversation
2 with Jeff Claxon?

3 A Yes.

4 He mentioned about running two folders on the press.

5 Q And did you say anything to him?

6 A I did.

7 Q What did you say?

8 A It is a lot more work running two folders and a lot
9 more responsibility.

10 I said thank God the Union is coming in.

11 Q Did you say anything farther to Mr. Claxon at that
12 time?

13 A No, I didn't.

14 Q Directing your attention to August 19, 1975,
15 did anything unusual occur on that day?

16 A Yes, I was told by Claxon that Ed Gambello would like
17 to see me.

18 First he said, -- he called me up and told me that he
19 would like to see me and I said, "Fine, the machine is
20 running good, I will come over."

21 He says, "No, stay there".

22 Later on Claxon says that he will be over in about
23 a half hour, wait around.

24 I said fine.

25 Q Did Gambello in fact come to the shop?

1 A Yes.

2 Q After this conversation with Gambello what did you do?

3 A Well, I walked down and called him from the gas
4 station and a man came down about five minutes later with
5 my pay.

6 Q What arrangement did you have with Deven concerning
7 your time card?

8 A Well, it's been going on since I have been there,
9 just about -- watch the press -- we always leave ten to
10 seven, 7:00 o'clock.

11 Q 7:00 o'clock in the evening?

12 A Right.

13 Q What was your normal work day?

14 A 7:30 to 2:30.

15 Q 7:30 in the morning?

16 A Right.

17 Q What hours did you in fact usually work?

18 A 12 hours normally.

19 Q What hours were those?

20 A 7:30 to 7:30.

21 Q Did you in fact personally work those hours or did
22 you work some other hours?

23 A Well, like I say, I used to leave about ten to seven,
24 7:00 o'clock when they were washing the press, all accord-
25 ing to the time the job got done.

1 Q What hour in the morning would you actually come in
2 in the morning?

3 A 6:30, quarter after, 6:20, after 6:25 to 7:00.

4 Q Was there any special reason for you coming in that
5 hour?

6 A Well, I used to open up the doors, you know.
7 I had the keys.

8 Q Is it a fair statement that your responsibilities
9 required you to be at the shop at 6:30 in the morning,
10 whereas the regular starting time was 7:30?

11 A 7:30 was the regular starting time.

12 Q And you regularly left at about 7:00 o'clock or
13 ten to seven?

14 MR. HUSBAND: I will object to the leading.

15 JUDGE WELLES: I think he is summing up.

16 Overruled.

17 Q You regularly left at seven o'clock or ten to seven
18 when the regular quitting time was 7:30?

19 A Right.

20 Q Do you know if Mr. Gambello was aware of this
21 arrangement?

22 A Yes, he was.

23 Q How was he aware of it?

24 A I told him.

25 He stopped at the shop a few times when I was leaving.

1 Q You had spoken to Mr. Gambello about this?

2 A Yes.

3 Q Had he ever objected to it or made any comment about
4 it?

5 A No.

6 Q Prior to the day you were fired, did you ever
7 receive any warnings about your job or any complaints
8 about your attendance?

9 A No.

10 MR. CLARK: I have no further questions, your
11 Honor.

12 JUDGE WELLES: Do you want to make a request for the
13 affidavit?

14 MR. HUSBAND: That goes with the form of asking
15 him.

16 JUDGE WELLES: I don't think it is necessary.

17 CROSS EXAMINATION

18 Q (By Mr. Husband) Mr. Aleksiewicz, did you make any
19 statements to an agent of the National Labor Relations --

20 MR. CLARK: Ask me and I will give it to you.

21 MR. HUSBAND: Do you have any statements?

22 MR. CLARK: Yes, I do.

23 MR. HUSBAND: Do you have any statements from the
24 R case?

25 MR. CLARK: Yes, I do.

1 I'm sure of that.

2 Q Before he gave you, he told you that if you didn't
3 like it, you could go back to Neptune, after three months?

4 A He didn't have to tell me that, I could go back.
5 I would just quit.

6 I told you I just took a three month leave of absence.

7 Q Now, you said earlier you worked as a pressman at
8 Deven?

9 A How early did I work as a pressman?

10 Q No, earlier you testified you went to work for Deven
11 as a pressman, right?

12 A Well, I was on rolls, you know.

13 Q You really weren't a pressman, were you?

14 A No.

15 Q You were in fact a trainee?

16 A Right, in rolls and stuff like that.

17 Q And Mr. Gambello assisted in your training, didn't
18 he?

19 A Yes, I would say so, yes.

20 Q You had a guarantee of at least \$9200 a year from
21 Mr. Gambello; didn't you?

22 A I don't recall.

23 I would say so, yes, with overtime, yes.

24 Q And after being a trainee you became an operator
25 which is -- excuse me --

1 A I don't recall --

2 Q (Continuing) Excuse me for using a term the Judge
3 and others might not know.

4 On larger presses there are frequently two or more
5 people, correct?

6 A Larger presses?

7 Q Yes, there are frequently pressmen operators, assist-
8 ants and others?

9 A Yes.

10 Q You were working on the larger press, weren't you?

11 A I was working on a two unit press, four people.

12 Q You were on the lowest rung of that four person
13 ladder, weren't you?

14 A Yes, I would start putting rolls on them.

15 Q And putting rolls in is just like rough labor, isn't
16 it?

17 A Jogging is a little harder, a little more work to it.

18 Q But it is the type of work that you see the young
19 inexperienced employees work at, isn't it?

20 A Excuse me?

21 Q Jogging and putting rolls in is the type of work
22 that a guy gets when he is first brought into the industry?

23 A Rolls are just a little more difficult than jogging.
24 They are both -- maybe not the same.

25 Putting rolls in is more difficult, you have to be

1 more careful.

2 Q But then you learned more and more?

3 A Yes.

4 Q As you worked?

5 A Yes.

6 Q And Mr. Gambello participated in the training process
7 for you?

8 A Yes, I would say so.

9 Q As the years went by you acquired more and more
10 skills?

11 A It wasn't years.

12 I think it was much less than a year before I became
13 a pressman and run a press.

14 Q Anyway, after a while you did in truth become a
15 pressman?

16 A Oh certainly, yes.

17 Q And you were given more responsibilities?

18 A That's right.

19 Q And much more pay, weren't you?

20 A A little bit more, yes.

21 Q A little more?

22 A Yes.

23 Q Do you remember what your basic weekly wage was when
24 you began?

25 A 130 I think a week.

1 Q It was 130 a week when you began?

2 A Yes.

3 Q And as of September, 1974 it was around 275, wasn't
4 it?

5 A Of '74?

6 Q Yes.

7 A Either 260 or 275.

8 I got fired at 275.

9 Might have been 274, might have been 275, 260,
10 around there.

11 There was a \$15 raise around there.

12 Q In those seven years you had gotten \$130 in increases,
13 is that correct?

14 A Yes.

15 Q And there was a considerable amount of overtime
16 available to you at Deven, wasn't there?

17 A Deven, when I was making 275 I wasn't working at
18 Deven, Cavalier and the presses are twice the size as
19 Deven.

20 Q At the Brooklyn plant.

21 At Deven all the times you have worked, when I use
22 the word Deven I am using Deven overall?

23 A Well, double the money with the press too, you are
24 talking about men on the press, four, and taking the Deven
25 press and Cavalier press, it is two and a half times the

1 size, it is a big difference.

2 Q When you moved down to the press at Brooklyn which is
3 Cavalier --

4 A Right.

5 Q (Continuing) -- you were reluctant to go there,
6 weren't you?

7 A Yes.

8 Q And didn't Mr. Gambello tell you that it was an
9 opportunity to better yourself and earn more money and to
10 learn more skills?

11 A I don't recall what he said but I thought myself to
12 learn more, you know.

13 I'm sure he did, you know.

14 Q But he reassured you and tried to persuade you, didn't
15 he, to take the opportunity?

16 A I asked him to go over there if I recall.

17 Q You asked for it?

18 A I'm sure I did, if I recall right.

19 Q Now, over the years you normally worked on the day
20 shift at both the Long Island City and the Brooklyn plants?

21 A Occasionally I worked nights.

22 Q As a matter of fact, weren't you transferred to nights
23 for one period and didn't you get transferred off of nights
24 because you came to Mr. Gambello and said, "I can't take
25 this any more"?

1 A I didn't like nights.

2 I'm trying to think now what I just said.

3 I probably did, you know, complain about working
4 nights, I'm sure of that.

5 Q And didn't he transfer you back to days?

6 A We used to rotate nights at Deven.

7 One shift would work one week and the next shift
8 would work week nights.

9 Q Weren't you permanently taken off that rotation?

10 A I went over to -- you know, going back many years
11 and I'm trying to think exactly right now.

12 When I was working in the Brooklyn plant I never
13 worked nights.

14 When we had three shifts in Deven I rotated nights.

15 We had the three shifts, you know.

16 When we were busy we had three shifts and we rotated.

17 Q You talked earlier about the 12 hour shifts.

18 Was that what you had in 1974?

19 A '74, 12 hour shifts?

20 Q Yes.

21 A Yes, we worked 12 hours.

22 Not all the time, when we were busy.

23 Q I thought earlier you said that your normal shift
24 was a 12 hour shift?

25 A No, when we were busy I said. The man asked me and I

1 said 7:30 to 2:30 and we worked overtime five hours, until
2 7:30.

3 Q What was your regular shift?

4 A My regular shift was 7:30, 2:30.

5 Q And you are now testifying that sometimes you worked
6 overtime?

7 A We work overtime quite a bit.

8 Q In fact that overtime varied quite a bit, didn't it?

9 A Yes, it varied, yes.

10 We would work a week, two weeks, we could work four
11 months 12 hours, two months 12 hours and go back on seven.

12 Q And not have any overtime at all for a long period,
13 correct?

14 A Yes.

15 We see months when we had no overtime.

16 Q And then sometimes just have a little bit of overtime,
17 say an hour or two a day?

18 A Yes.

19 Q When were you transferred down to Cavalier to the
20 large press?

21 A I believe it was '71 or '70 around there.

22 Now I don't really recall.

23 '70 or '71.

24 Q Did you become the top pressman at the very beginning?
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A Yes.

Q You went down there, you were in charge there too, weren't you?

A Yes.

Q When you went down to the Cavalier plant in Brooklyn you were told, weren't you, that you were in charge?

A Yes, Eddie told the guys, you know, that I would be in charge.

Q Weren't you also told that if you wanted to leave early, you could leave early?

A No, this was later on.

This was -- I wasn't told that, no, no.

Q You weren't told that you could leave early?

A No.

Q You could punch out your card whenever you wanted to?

A No, not at that time, no.

Q Well, when were you told that you could punch out your card when you wanted to?

A I told Eddie. I told him maybe six, seven months after that, you know.

Q In six or seven months after 1970 or '71?

A Yes, when I started.

Q Not at the beginning but later you said "Look, why should I stay on for a washup, I will punch out early and go home"?

1 A No, I didn't say I would punch out, but I was paid to
2 7:30.

3 Q Pardon me?

4 A I was paid to 7:30.

5 Q You were paid to 7:30?

6 A Right.

7 Q When did you begin?

8 A When did I begin?

9 Q Yes.

10 A I don't recall.

11 Q What time of the day did you begin?

12 You say you were paid to 7:30.

13 When did you begin in the morning?

14 A 7:30.

15 Q And you were paid everyday until 7:30?

16 A If we worked to 7:30.

17 Q My question is you were paid to 2:30, weren't you?

18 A If we didn't work overtime we left at 2:30, right.

19 Q Didn't you talk to Mr. Gambello about leaving early
20 before the presses were washed up so that you didn't have
21 to stay around and wash up the presses?

22 A Would you repeat that, please, I want to get this
23 straight so I know my answer.

24 Q Didn't you frequently work overtime till say 4, 5:00
25 o'clock instead of 7:30?

1 Q Correct.

2 A I told him I don't like to work to 5, you know, on
3 account of the traffic, but if we worked till 5 I worked
4 to five.

5 Q You mean you stayed around there all during press
6 wash up?

7 A We worked to 5, say a half hour wash up, 35 minutes,
8 all according to the way the jobs broke.

9 Sometimes I'd stay to five, sometimes I would leave
10 five to five, ten to five.

11 I am going by the 7:30, you know, the same time
12 element, you know, that I did leave the shop.

13 Q Well, how much before the rest of the crew did you
14 leave?

15 A Well, say we worked to five, is that what you are
16 saying?

17 I left 35 minutes, 35 minutes, 30 minutes, all varied
18 the way the job broke.

19 Q Before the rest of the crew?

20 A Right, the way the job broke.

21 Q You had asked Mr. Gambello about this, hadn't you?

22 A Yes, yes, I would say so.

23 Q And he had said, fine, you can punch out early?

24 A Fine, I could punch out early?

25 No, I don't recall. I got paid the same time as they

1 got paid.

2 I just told you that before.

3 Q You are testifying that all during the years from
4 1971 you had someone punching your card out early or
5 punching your card out after you left all the time?

6 A Not all the time, no, not all the time, not everyday.

7 Q Sometimes would you punch it early yourself when you
8 left?

9 A No, no.

10 Q It was always punched out by someone else when the
11 rest of the shift left?

12 A Right.

13 Q And you have been doing this since 1971?

14 A I told you not everyday, you know, sometimes where I
15 would punch my own card out at 7:30.

16 Q Sometimes you would stay till the end of the shift
17 and punch out?

18 A Right.

19 Sometimes not.

20 Very few times, you know, very few.

21 Q Did you ever leave early and punch out?

22 A No.

23 Q You would always have someone punch your card out?

24 A Right.

25 MR. HUSBAND: May I have a moment?

JUDGE WELLES: Yes.

Q Now, what did you just say about 7:30?

Sometimes you would stay till 7:30 and punch your card out yourself?

A Well, it is all -- yes, that is what I said.

Q What percentage of the time would you punch your card out as compared to the times that other people punched it out?

A Oh, very few times, very few.

Q In other words, almost always someone else from the crew would punch your card out?

A That's right.

Q And you would be gone 35 minutes before that?

A Right.

Q So what you are saying is that the time cards would show that your time is punched out at the same time as all the other employees all during the years with a rare exception or two?

A I would say so, yes.

Q You would say that?

A Yes.

Q You are also saying that you told Mr. Gambello that you were doing that?

A Yes, he knew I was doing this.

Q Did you tell him you were doing that?

1 A Yes, I believe I did, yes.

2 Q When did you tell him?

3 A I don't remember.

4 I couldn't say offhand when, you know.

5 Q Wasn't there a sign over the time clock at Cavalier
6 that anyone caught punching out another person's card
7 would be discharged?

8 A I imagine we had cards like that, yes.

9 Q You had a sign like that; is that right?

10 A Yes, we had signs.

11 Q You say now under oath that you violated that on a
12 regular, almost daily basis?

13 A Right.

14 Q You did?

15 A Yes.

16 Q Now, when did you talk to Mr. Gambello about the
17 fact that you were violating that rule?

18 A When did I talk to him?

19 Mr. Gambello, sure, he knew I was doing that all
20 along.

21 When did I talk to him?

22 I can't go in years because I wouldn't remember.

23 Q You wouldn't remember?

24 You mean --

25 A I mean in years, you know, going back in years, I

1 wouldn't remember when.

2 Q Were you doing it at Deven too?

3 A No.

4 Q You didn't do it until you were down by yourself at
5 Cavalier?

6 A Right.

7 Q Then there was no one in charge of you at Cavalier
8 was there?

9 A No.

10 Q You were the boss, right, at Cavalier?

11 A Yes.

12 Q You arranged with the men to punch your card, correct?

13 A Yes.

14 Q Did you let the other men do that for one another?

15 A No.

16 Q You were the only one with that privilege, correct?

17 A Right.

18 Q And you made sure no one else did that, didn't you?

19 A I would say so, yes.

20 Q You would have fired anyone else who did that, wouldn't
21 you?

22 A I don't know if I would fire them.

23 I would have told them about it.

24 Q You would have told Mr. Gambello about it?

25 A I wouldn't let them do it.

1 A Yes, when the press is running, certainly.

2 Q On the days you would work overtime say till 5:00
3 o'clock, everyone would be there till five except you?

4 And you would have left at 4:30 correct, normally?

5 A It varies, it varies.

6 Sometimes I leave at 4:30, sometimes I leave at
7 5:00 like I said before.

8 Q But usually and the great overwhelming majority of
9 instances you would leave early, wouldn't you?

10 A I would, right.

11 Q Now, you are being paid from 7:30 to 5:00 correct?

12 A Right.

13 Q And in fact you had only worked from 7:30 to 4:30,
14 correct?

15 A That's right.

16 Q Now, what reason did Mr. Gambello give you for allowing
17 you to do that?

18 A I told Mr. Gambello.

19 He didn't give me a reason, I told him the reason.

20 Q What is the reason?

21 A I used to use my car to go back and forth to the
22 other shop, I used to order stuff for the shop since I
23 was running the shop.

24 I used to order the ink, what I needed to run the
25 shop and --

1 Q Wasn't that part --

2 A Some varied things.

3 Was that part of my duties? No.

4 Q I thought you were in charge of the shop?

5 A But being a pressman, being a pressman and being
6 in charge of the shop was two different things.

7 I was in charge of the shop because I took the shop,
8 you know, he put me in charge of the shop for being a
9 pressman.

10 In charge of the men running the press, not the
11 shop.

12 Q So were those all the reasons for --

13 A The reasons, ordering parts, going to the hardware
14 store with my car, buying parts, doing various things
15 that I would use.

16 Like I just told you, ordering stuff and salesmen
17 would come in and taking care of salesmen and so forth.

18 Various things.

19 Everything that would happen, you know, the shop
20 basically needs to run.

21 Now, I took care of it.

22 MR. HUSBAND: May I have just a moment?

23 JUDGE WELLES: Yes.

24 Q Were there any other reasons you gave Mr. Gambello for
25 wanting that privilege of being able to be the only one who

1 had someone else punch his card out?

2 A Not that I can remember.

3 There might have been.

4 I'm just saying not that I remember.

5 Q So you are not claiming that it was because you
6 opened the plant in the morning that you were allowed that
7 privilege?

8 A Well, I was part of it, I was part of it.

9 Q Well, you just testified that you never began work
10 until 7:30 in the morning?

11 A That's right.

12 Q So what good were you doing the company?

13 MR. CLARK: Objection.

14 A I had the keys to open the door up.

15 JUDGE WELLES: Just a minute.

16 Overruled.

17 Go ahead.

18 A (Continuing) I get very nervous, I'm sorry, not
19 nervous, I just want to answer the questions.

20 Q You are saying because you had the keys to the plant --

21 A I didn't have to have the keys, did I?

22 I was a worker.

23 Q Well, I thought you were in charge of the plant?

24 A I punched the clock.

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MR. CLARK: Objection, your Honor.

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JUDGE WELLES: Sustained.

Q Didn't you testify you were in charge of the plant?

A Yes.

Q Isn't that why you had the keys?

MR. CLARK: Objection, your Honor.

JUDGE WELLES: Sustained.

A I would say so, yes.

MR. CLARK: Don't answer.

THE WITNESS: Oh, I m sorry.

Q How did you get the keys to the plant?

MR. CLARK: Objection, your Honor.

I think the question --

JUDGE WELLES: Sustained.

Q When were you given the keys to the plant?

A Soon as I went over there, I would imagine.

Q When you went over there there was no one that was in charge of you, was there?

A When I went over there?

Ben Rekosh was in charge of me there, yes.

Q Was anyone physically indicated at the Brooklyn Cavalier plant that was commanding you, directing you?

A In Cavalier at the time?

Q Yes.

A No.

Ben came over. He was, you know --

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Q He would visit?

A Visit.

He would tell me on the phone what he wanted done.

Q But then you got the keys when you first went over?

A I would say so, yes.

Q Let us consider your status at Cavalier and your work functions as of September, 1974.

This is a year ago, around the time of the election?

A Yes.

Q I'm saying that to you because I don't want to confuse you.

I just want you to think back in time to what your position and your functions were at that time.

A Say the whole thing over.

All right, go ahead.

Q What I am saying is, I'm going to ask you a number of questions about what your functions, duties and responsibilities were as of September, 1974; you understand that?

A Right.

MR. CLARK: Your Honor, I think I'm going to object to this line of questioning since it has been laid out for us.

His work functions in September of '74 are not

1 material to this proceeding.

2 JUDGE WELLES: Are you asking this witness back to the
3 representation proceeding or with respect to the allegation
4 of 8A3?

5 MR. HUSBAND: 8A3.

6 JUDGE WELLES: How are they relevant to the 8A3?

7 MR. HUSBAND: To show the man's progress through the
8 company.

9 JUDGE WELLES: I don't think pinpointing a date of
10 September, '74 is really germane.

11 If you want to take some other date that doesn't
12 relate directly to the representation proceeding, I will
13 take it.

14 MR. HUSBAND: I will take it for the year 1974, all
15 right?

16 JUDGE WELLES: Well, you will have to explain a little
17 more why you want it.

18 I think in view of the fact that the representation
19 proceeding is involved peripherially at least in this
20 manner.

21 MR. HUSBAND: The reason is that -- all right, I
22 will take '75, your Honor, and then go into '74 because,
23 as the testimony indicates, there was another change in the
24 status in '75.
25

1 JUDGE WELLES: I still do not see how relevant to the
2 discharge these facts that you are indicating you are
3 about to elicit are, unless you would at this point tell
4 me what the company's position is with regard to the
5 discharge or else I can't rule intelligently.

6 MR. HUSBAND: The company's position was essentially
7 the man was discharged for the reason given, but after
8 many years of giving responsibility, in a sense being
9 taken advantage of, and realizing finally that a friendship
10 had been perverted and taken advantage of, and I say to the
11 Judge that the man's status and his growth and responsibility
12 and position over the years and in salary will show and
13 indicate was certainly not a one-sided affair and that while
14 he may have had many skills to the profit of the company,
15 the company profited him.

16 JUDGE WELLES: I think I will sustain the objection
17 to the questions you are about to ask.

18 I don't see how they will add anything at all to
19 either your theory on the case or the General Counsel's
20 theory.

21 In other words, I'm saying they are irrelevant to
22 the disposition of the SA3 allegation.

23 MR. HUSBAND: I too have an exception.

24 JUDGE WELLES: Yes.

25 Q After the election in 1974 did anybody in management

1 talk to you about being a union observer?

2 A No.

3 Q Nobody from management talked to you about the union,
4 did they?

5 A No.

6 Q In January, '75 there was a change in your position,
7 wasn't there?

8 A Yes.

9 Q Prior to that change, immediately prior to that
10 change in position in January, '75, you were still in
11 charge at Cavalier, correct?

12 A Prior to '75?

13 Q No, say the day before the change?

14 A Yes.

15 Q The change was late January, '75?

16 A All right.

17 Q Say the day before in mid January, '75, you were
18 still in charge at Cavalier, weren't you?

19 A Yes.

20 Q And you ran the premises there on a day-to-day basis,
21 didn't you?

22 A Yes.

23 Q You ordered supplies, didn't you?

24 A Yes.

25

1 Q And you assigned overtime to employees, didn't you?

2 A I assigned -- well, Ben would tell me the overtime
3 schedule, that this week we will go on 12 or these four
4 days we will go on 12 hours.

5 Q But you would choose the people that were needed,
6 wouldn't you?

7 A No, usually the whole crew stayed.

8 Q Usually, but weren't you the one who decided whether
9 the whole crew left or a number stayed?

10 A Normally the whole crew would stay.

11 Q Well, when the whole crew didn't stay, who is the
12 man that made the decision?

13 A Who was the man that made the decision if a guy
14 wanted to go home early, you know, I wouldn't bother Ben
15 with it, I would let him go and just put another guy on his
16 job.

17 Q He would come to you about it in the afternoon and
18 you would make the decision whether he could go home early
19 or not?

20 A Yes.

21 If he had to go some place, right.

22 Q And you had the power to discharge people, didn't
23 you?

24 A I don't think it would have been anything said if I
25 did discharge anybody.

1 Q You did fire a man, didn't you, in a prior year?

2 A Yes.

3 Q In 1973 or so you fired someone?

4 A The man wanted to be fired, told me to fire him.

5 Q Besides the overtime work caused by the production
6 schedule that Rekosh would tell you about, wasn't there
7 occasional overtime connected with plate work or something
8 along that line?

9 A Oh, yes.

10 Q And didn't you make the decision about who should
11 work overtime for that?

12 A Well, I did.

13 I told Ben it was a good idea to have two guys stay
14 to handle the plates so the pressman would start off in the
15 morning, and he told me anything I wanted to do in that
16 respect I could do.

17 Q How often would Rekosh come to the plant, once or
18 twice a week?

19 A Oh, sometimes he would come five days, sometimes I
20 wouldn't see him for two, three weeks sometimes, you know.

21 It varied.

22 Q On a year round average would you say about two days
23 a week?

24 A On a year round average I couldn't say.

25 I just told you if he had a customer come down for

1 make ready he would come down with the customer.

2 Throughout the year I couldn't roughly say.

3 I couldn't -- four months, five months, six months,
4 it could be eight months, I couldn't say.

5 He never was down eight months.

6 I'm just speculating now, something went on that
7 something that -- he didn't like or something, I guess he
8 would come over, you know, or he would come over -- most
9 of the time with customers to okay a job.

10 Q You assigned work to employees?

11 A Excuse me.

12 Q You assigned work to employees at Cavalier?

13 A Did I assign work to employees?

14 Q You assigned work to the employees, you told them
15 what to do?

16 A Oh certainly, yes.

17 Q I'm asking about the same period, just before your
18 subsequent promotion, that same time, if there was something
19 wrong with the press you could order repairs on it,
20 couldn't you?

21 MR. CLARK: Objection.

22 JUDGE WELLES: We have had enough of that, the duties.

23 Q When you were given the promotion to management in
24 January how did it occur?

25 A Going out to lunch.

1 Q Did you and Ed and Ben ever lunch together?

2 A Yes.

3 Q And this was in January, 1975?

4 A I would say roughly January, could have been February,
5 I don't recall what it was, January.

6 Q Three months after the election, right?

7 A Yes, three or four months, I don't recall.

8 Q They said that they had a new and good opportunity
9 for you?

10 A Yes.

11 MR. CLARK: Objection, your Honor.

12 JUDGE WELLES: You have an objection to the whole line
13 or this specific question?

14 MR. CLARK: Both, your Honor, both this particular
15 question which calls for hearsay and secondly, the whole
16 line of questions.

17 JUDGE WELLES: I will overrule the objection to the
18 specific question, but sustain it as to the line at this
19 point.

20 MR. HUSBAND: I can't ask him about the man's function?

21 JUDGE WELLES: I think we have already gotten into
22 it.

23 MR. HUSBAND: We haven't talked about that.

24 He had a new position beginning in January, 1975.
25

1 We haven't even covered that.

2 JUDGE WELLES: At Cavalier?

3 MR. HUSBAND: Yes, more than Cavalier, at both plants.

4 This is the management position that Mr. Clark has
5 talked about.

6 We haven't even talked about that.

7 JUDGE WELLES: We were back in '74.

8 MR. HUSBAND: Back about January, '75.

9 JUDGE WELLES: What is the relevance of talking
10 about it then?

11 MR. HUSBAND: About what his functions were, what the
12 nature, the relationship was between him and the company
13 in 1975, during the period that he was management and that
14 he testified about requesting not to be management.

15 JUDGE WELLES: This is a situation that ended prior
16 to his discharge; is that correct?

17 MR. HUSBAND: At his request, your Honor.

18 JUDGE WELLES: Yes, but it did end, he was discharged
19 from an admittedly rank and file post at that point and
20 there is no contention on your part that he was a supervisor
21 within the meaning of the Act at the moment of discharge,
22 is that correct?

23 MR. HUSBAND: No, there is no contention on our part.

24 JUDGE WELLES: Then perhaps General Counsel is willing
25 to stipulate that during 1975, from January to whatever the

1 date is he came back to rank and file and he was a
2 supervisor within the meaning of the Act --

3 MR. CLARK: From January '75 to sometime late in
4 July.

5 JUDGE WELLES: Right.

6 MR. CLARK: I am prepared to stipulate that he was
7 either a supervisory or managerial employee.

8 He was not an employee within the meaning of the
9 National Labor Relations Act.

10 JUDGE WELLES: Very well.

11 MR. HUSBAND: That won't do it because of the nature
12 of the relationship between the company and this man which
13 is very vital to our case.

14 JUDGE WELLES: In what way?

15 MR. HUSBAND: In that people in this world, there is
16 more than one relationship.

17 I mean, you have a man for eight years, you have him
18 as a manager.

19 I suggest to you the nature of the relationship
20 during his period as manager may well reflect what you do,
21 may well be part of the decisional process about what action
22 you take to him three weeks after he returns to employee
23 status.

24 JUDGE WELLES: But I cannot quite see unless you can
25 be more specific and I am going to have to sustain the

1 objection because I cannot see how the details of what
2 made him managerial or have this relationship can be of
3 relevance.

4 MR. HUSBAND: I mean his salary isn't relevant as
5 a manager?

6 JUDGE WELLES: I don't see how it is.

7 MR. HUSBAND: Oh, your Honor, I mean, that is our
8 whole case.

9 JUDGE WELLES: To the question to the motivation for
10 the discharge --

11 MR. HUSBAND: Our whole case and you have to know the
12 nature of the relationship, you have to know what the man
13 was paid, whether it was something forced upon him, whether
14 it was something he wanted.

15 I mean, that is the essence of our case.

16 Without that, sir, we have no case in the sense that
17 we are being deprived of a crucial portion of our case,
18 absolutely crucial.

19 JUDGE WELLES: You are talking about a relationship
20 in some vague way and you ask about the specific duties
21 and the specific duties don't go to what you call relation-
22 ship arrangement, some of the subtleties that you seem to
23 be talking about that at the moment I can't quite see the
24 relevance of.

25 MR. HUSBAND: To just stipulate that he is managerial

1 or supervisory and says nothing about his responsibilities,
2 about how he felt about the job and he has already told
3 on direct that he was dissatisfied, that he wanted and it
4 was the change from managerial at his request and aren't
5 I -- I know I am entitled to ask about that.

6 JUDGE WELLES: Yes, absolutely.

7 MR. HUSBAND: And then can't I ask what the functions
8 were so as to find out why he was dissatisfied, why he
9 wanted a change and what was said to him?

10 JUDGE WELLES: Why don't you get to it more directly
11 by asking the ultimate question first and perhaps then
12 you might find it necessary to ask more about the functions
13 to explain that.

14 Q You willing went into this managerial function in
15 January, '75?

16 MR. CLARK: Objection, your Honor.

17 JUDGE WELLES: Overruled.

18 Q Would you answer the question, please?

19 A Yes, around '75 we went out to eat as I told you.

20 He asked me to go -- would I like to go into
21 management and I told him yes.

22 Shall I go further?

23 Q What was the basis for your salary going to be?

24 A \$385 a week.

25 Q \$385 a week?

1 How was that computed?

2 A I don't understand the question.

3 Computed which way?

4 Q Didn't Mr. Gambello tell you that he would give you
5 an amount of money that would guarantee you the income
6 that would match the best year you ever had working for
7 him, including all the overtime you received?

8 A He did, yes.

9 Q And didn't he calculate out your best year which
10 came to about \$21,300 and divide that up and get the
11 \$385 figure from that?

12 A Well, the figure came -- the best year -- I think
13 it was \$22,000 I made, I believe that was my best year
14 I ever had in Deven.

15 Q And he used that year for the figure for calculating
16 the \$385?

17 A Yes.

18 Q And in addition to the \$385 didn't he give you a
19 company car?

20 A Yes, after four months, three months working there,
21 right.

22 Q With a maintenance contract?

23 A Yes.

24 Q So that you had no expenses whatsoever on the car?

25 A No, none whatsoever.

1 Q Didn't he give you an automobile gasoline credit
2 car?

3 A He did.

4 Q So that you had unlimited use of that?

5 A He did.

6 Q And didn't he give you a guarantee \$10 a week
7 in money --

8 A Well, it was off --

9 Q Off the books, petty cash?

10 A Petty cash, right.

11 Q Did you ask specifically, didn't you ask him for
12 that \$10 a week extra?

13 A Well, yes, because I couldn't -- I couldn't keep --
14 normally what I done before, if he wanted me to get into
15 it, you know, all right, go ahead, I won't go into it.

16 You ask me.

17 Q Well, it was that you were now getting a flat weekly
18 amount and you would give your whole check to your wife;
19 is that right?

20 A That's right.

21 Q And she would give you an allowance, correct, from
22 that?

23 MR. CLARK. Objection, your Honor.

24 JUDGE WELLES: Sustained.

25 The man's domestic arrangements certainly do not

1 concern us.

2 Q But you specifically asked for --

3 MR. HUSBAND: Well, it is because it is another
4 request that was made of the company that the company
5 complied with.

6 JUDGE WELLES: So what?

7 MR. HUSBAND: So what?

8 JUDGE WELLES: Yes.

9 MR. HUSBAND: So years of being decent to the man
10 can't come into the balance?

11 JUDGE WELLES: You were decent to the man.

12 I don't think we need any more examples of how you
13 were decent to the man.

14 You being the company.

15 Off the record.

16 (Discussion off the record.)

17 JUDGE WELLES: On the record.

18 Q Under the arrangements in January, '75, you were
19 given responsibility for both Deven and Cavalier press
20 production, is that correct?

21 A Press production, ordering parts, you know, ordering
22 everything, yes.

23 Q And you were off the clock?

24 A I was.

25 Q Now, let me skip that a bit.

1 That wasn't the first time you were off the clock
2 at Deven, was it?

3 A No.

4 Q There was one time in 1972 or '73 that they took you
5 off the clock?

6 A I don't recall, but they go off the clock in manage-
7 ment, yes.

8 Q You requested to go back to the press, didn't you?

9 A I did.

10 Q To go back to the clock?

11 A I did.

12 Q At that earlier time?

13 A I did.

14 Q And that request was granted; is that correct?

15 A Yes.

16 Q So that you could continue earning overtime?

17 A Right.

18 Q Now, you had a number of meetings with Mr. Gambello
19 at which you indicated in 1975 that you wanted to go back
20 on the clock again didn't you?

21 A I did, after a couple of months, two, three months,
22 I imagine, probably four months, two, three months I
23 wanted to go back on the clock.

24 Q Didn't Mr. Gambello tell you you were doing a very
25 good job?

1 A He says I was more valuable to the company in the
2 job I was doing.

3 Q And they didn't need you as a pressman, didn't he
4 also say that?

5 A No, he says -- that's right, he said that was -- I
6 was more valuable -- I went ahead of myself then, by
7 saying I was more valuable in the job I was doing.

8 Q Which was the overall manager?

9 A Right.

10 Q But you kept saying that you wanted to go back on
11 the clock?

12 A I said it a few times, yes.

13 Q Well, quite a few times, didn't you?

14 A A few times.

15 How many times? I don't recall.

16 Could have been five, six times.

17 Q You said it to Mr. Rekosh a number of times too,
18 didn't you?

19 A Oh, yes.

20 Q And you complained to the accountant about it too,
21 didn't you?

22 MR. CLARK: Objection, your Honor.

23 JUDGE WELLES: Overruled.

24 A I don't recall.

25 I might have said. I don't know, I really don't know.

1 Might have said something to him.

2 Q And in July you were on vacation, weren't you?

3 A July or August, I don't recall when I had the
4 vacation.

5 Q If I say to you that the discharge was August,
6 around August 19th and didn't you work a few weeks as
7 a pressman before that discharge?

8 A Yes.

9 Q So then you returned from your vacation to the job
10 as a pressman, didn't you?

11 A That's right.

12 Q So you were on vacation in July.

13 Didn't you approach Mr. Gambello again and say that
14 you just had to get back on the clock?

15 A I said I would like to go back on the clock, yes.

16 Q What did he say?

17 A He says fine.

18 Q He said, didn't he, that he was doing it only for
19 you and that he would have preferred you to stay as
20 manager?

21 A At that time?

22 Q Yes, in July?

23 A I don't really remember that.

24 He told me I could go back.

25 He told me I could go back on the clock and Jeff will

1 stay over there and give him a hand, you know, do the same
2 thing, help the company ordering stuff, you know, give him
3 a hand and do my work.

4 Q But while you were the manager there was another
5 pressman at Cavalier at the Brooklyn plant, right?

6 A There was, right.

7 Q And when you went back on the press nothing happened
8 to him, did it?

9 A I tell you, tell you why.

10 Everytime they had a make ready, if you want to go
11 into details, I want to do a little talking now myself,
12 everytime we had a make ready over in Cavalier I had to go
13 into a work uniform and do the make ready anyway, so if I
14 had to do the make ready, I might as well be paid for it.

15 Q But he still remained as a pressman, correct?

16 A Excuse me -- when I went back --

17 Q Yes.

18 A No, I became pressman when I went back.

19 He became second pressman, the title he had before.

20 Q No one was fired or anything, were they?

21 A No.

22 Q And the approach you made in July to Mr. Gambello
23 was while you were on vacation, correct?

24 A That's right.

25 Q You went to Mr. Gambello's house?

1 Brooklyn, how long is it?

2 A. Less than ten minutes.

3 Q It takes you --

4 A. Five minutes, ten minutes, depending on traffic.

5 Q So that you could have -- withdrawn.

6 MR. CLARK: I have no further questions,
7 your Honor.

8 MR. HUSBAND: No redirect, your Honor.

9 JUDGE WELLES: Thank you, Mr. Claxton.

10 (Witness excused.)

11 Whereupon, EDWARD GAMBELLA, was called
12 as a witness and having been first duly sworn by the
13 Administrative Law Judge, was examined and testified
14 as follows:

15 DIRECT-EXAMINATION

16 BY MR. HUSBAND:

17 Q Would you please state your full name for the
18 record?

19 A. Edward Gambella, Two Scott Drive, Melville,
20 Long Island.

21 Q Mr. Gambella, you heard Mr. --

22 MR. HUSBAND: Your Honor, for the sake
23 of speed, I'm just going to ask an obvious question.

24 BY MR. HUSBAND:

25 Q You heard Mr. Aleksiewicz's testimony yesterday

1 regarding the beginning of your relationship and
2 all that?

3 A. Yes.

4 Q. Was that accurate?

5 A. Yes.

6 Q. When did you -- strike that.

7 How did the possibility of his working for Deven
8 come up?

9 A. Well, it started on a social level. It started
10 in discussion insofar as salaries and jobs and so on.

11 Q. What was said?

12 A. Well it --

13 MR. CLARK: Objection, your Honor.

14 JUDGE WELLES: Since he has testified
15 that the testimony was accurate, doesn't that pretty
16 much cover it?

17 MR. HUSBAND: That was about social. This
18 is about coming to work at Deven.

19 BY MR. HUSBAND:

20 Q. Who first raised the possibility of working at
21 Deven?

22 MR. CLARK: Your Honor, I persist in
23 my objection.

24 JUDGE WELLES: I think I'll sustain the
25 objection.

1 I think we know the background enough
2 that to go back the nine years, the precise language,
3 it won't help us.

4 MR. HUSBAND: Right.

5 BY MR. HUSBAND:

6 Q You did offer him employment at Deven?

7 A Yes.

8 Q As what?

9 A As a pressman or eventually pressman.

10 Q And what did he start out as?

11 A He started basically as a trainee.

12 Q Did you participate in his training?

13 A Yes, I did.

14 Q In January of 1975, did -- well, what was the
15 nature of the position he was given in January of
16 1975?

17 A We brought him into management.

18 Q As what?

19 A As Production Manager.

20 Q Which covered what duties?

21 A Well, he was basically a management employee prior
22 to that. He was in management in Cavalier as a one-
23 press or one-shop operation.

24 We then expanded the production, took him off the
25 press on a full-time basis now in production, off the

1 press, off the clock and gave him responsibility for
2 production in both plants.

3 Q How did he do at that job?

4 MR. CLARK: I object.

5 Withdrawn.

6 A Do I understand that question?

7 JUDGE WELLES: Yes.

8 MR. HUSBAND: Yes.

9 A Very well.

10 Q How did he work?

11 A Very well.

12 Q Did he make any comments about how he felt about
13 the job?

14 A Well, on several occasions he said he'd like to
15 go back on the press, that he wasn't happy because he
16 had a tendency of being nervous or getting nervous.

17 Q When did he say that?

18 A Well, several times.

19 Q When did that begin?

20 A Many times.

21 It began right away. It began a week or so
22 afterwards.

23 Q What was your reaction?

24 A I told him to just not to worry about it, that
25 everything was going fine and to stay where he was

1 because it was important to Deven and at the same
2 time it was better for him.

3 Q Now, did he persist in that, in those comments?

4 A Well, as I said, on occasion when we would sit
5 and talk or whatever, he would say that he still felt
6 happier if he were back on the press.

7 Q Did he contact you in July 1975 regarding that?

8 A Yes.

9 Q And what was your reaction then?

10 A Well, at that point again I tried to talk him
11 out of going back on the press because I did not need
12 him on the press. We had a pressman at that time.

13 He said that he's finally made up his mind, he
14 has to go back on the press, he's just not happy on
15 what he's doing.

16 So -- in fact, we were -- this was a way from
17 the shop. This happened in front of my home.

18 We were talking outside of the car in the
19 driveway about it.

20 I said, "Henry, if you're so persistent on it,"
21 I says at this point, "Then fine, I'm going to just
22 have to do it."

23 Q And it was done?

24 A It was done.

25 Q Were there any other changes made at Cavalier in

1 July?

2 A. Well, Jeff Claxton went to Cavalier at the
3 same time, while Henry was on vacation, that is, then
4 Jeff was put in there.

5 Q. And you heard Mr. Claxton's testimony about that?

6 A. Yes.

7 Q. Was that accurate?

8 A. Yes.

9 Q. Did --

10 A. That, in fact, helped my decision of saying that
11 he can go back on the press.

12 I had somebody in management and reorganization
13 and production and control, namely, Mr. Claxton.

14 Q. Well, had Claxton raised that in June?

15 A. We talked about it in June.

16 Q. Now, what were Claxton's duties when he was put
17 over there?

18 A. Well, to quote Mr. Claxton's statement, he had
19 carte blanche. It was his shop. He was going in
20 there to take complete control of the organization.

21 Q. Did -- strike that.

22 After Aleksiewicz returned from vacation, did
23 Mr. Claxton mention him to you in any particular?

24 A. Well, Ben mentioned it to me first -- or, I should
25 say Mr. Rekosh mentioned it to me first.

1 BY MR. HUSBAND:

2 Q In that conversation on the 19th, didn't
3 Mr. Gambella indicate that he was trying to build an
4 organization?

5 A Well, what Mr. Gambella told me is what I told
6 you, what I just told you before.

7 Q Well, I said, didn't he say that he was trying to
8 build an organization?

9 A Yes.

10 Q All right.

11 MR. HUSBAND: No further questions.

12 MR. CLARK: Nothing further.

13 JUDGE WELLES: Thank you.

14 THE WITNESS: Thank you, sir.

15 (Witness excused.)

16 MR. CLARK: May we go off the record for
17 a moment, your Honor?

18 JUDGE WELLES: Yes.

19 Off the record.

20 (Discussion off the record.)

21 JUDGE WELLES: Back on the record.

22 Mr. Clark.

23 MR. CLARK: Your Honor, at this time,
24 after having an off-the-record discussion with counsel
25 for the Respondents, I would move to stipulate that

1 Geoffrey -- with respect to section -- with respect
2 to Paragraph 6B of the complaint that Geoffrey Claxton
3 was during the period mid July 1975 through August 19th,
4 1975, supervisor and an agent of the Respondent and
5 a supervisor within the meaning of Section 2(11) of
6 the Act.

7 MR. HUSBAND: The Employer will so
8 stipulate.

9 JUDGE WELLES: All right; fine.

10 MR. CLARK: I have nothing further,
11 your Honor.

12 JUDGE WELLES: You, Mr. Husband, do you
13 have anything further at this stage?

14 MR. HUSBAND: No.

15 JUDGE WELLES: All right.

16 Off the record.

17 (Discussion off the record.)

18 JUDGE WELLES: Back on the record.

19 Mr. Clark, you may proceed.

20 MR. CLARK: Thank you, your Honor.

21 Your Honor, there are at least two
22 preliminary points before I get into the substance
23 of the allegations.

24 First, I would like to make clear what
25 I believe to be the General Counsel's position on the

1 Respondents in order for them to further litigate the
2 certification issue in Case No. 29-RC-273.

3 General Counsel asserts and obviously
4 Respondents resist the second theory of an 8(a)(5)
5 violation which we will get to shortly, but we're
6 asserting at this point two different violations of
7 Section 8(a)(5) of the Act.

8 Now, getting on to the substance of the
9 allegations which we have.

10 Your Honor, we would argue that the
11 evidence here, wholly un rebutted, is that for nearly
12 three months, or for two and a half months, the
13 Employer was aware, by service of the certification
14 of the representative, that Local One was under the
15 law the bargaining agent of its employees.

16 During that two and a half or three months,
17 the Employer steadfastly refused to make available
18 any sort of authorized representative either to enter
19 into collective bargaining with Local One, a duty
20 which it clearly has under Section 8(a)(5) of the Act,
21 or even to minimally advise Local One that it did not
22 intend to bargain and that it intended to further
23 litigate or invite further litigation of the
24 certification.

25 Your Honor, the fact that Respondents'

1 president may have been on a vacation or be detained
2 by business in another area of the United States is
3 not excuse for a period of two and a half months not
4 to appoint some other authorized representative to
5 meet with the union, not even to inform the union that
6 the previous representative, Mr. Gambella, was unavailable
7 or to explain why he was unavailable.

8 Consequently, your Honor, I think it's
9 fairly clear from the evidence here that prior to its
10 decision further to litigate a certification,
11 Respondents attempted to evade and to delay their
12 obligations to bargain with Local One, an obligation
13 which was thrust upon it in no small part by the
14 persistence of Local One's representatives in trying
15 to ascertain what the Employer's position was.

16 So that, your Honor, we feel is fairly and
17 clearly established by not only the preponderance but
18 the un rebutted evidence in this case.

19 Secondly, your Honor, the unlawful discharge
20 in this case arises precisely at the same time this
21 practice of evading and delaying the bargaining with
22 the union occurred.

23 The discharge we assert occurred precisely
24 because Mr. Aleksiewicz, as corroborated by Mr. Claxton,
25 discussed the union and discussed his continuing

1 JUDGE WELLES: But in July it was
2 inconceivable they could get rid of the union with
3 or without Aleksiewicz.

4 Isn't that so?

5 MR. CLARK: It's not inconceivable.

6 JUDGE WELLES: I'm talking about other
7 than in terms of their legal objections to the
8 certification.

9 But if they fail, there was going to be
10 no new election, no new vote or anything like that.

11 MR. CLARK: But they could dissipate the
12 union's majority. They could run out their
13 certification year and then say: Show us your
14 continuing interest in the shop.

15 JUDGE WELLES: But the presence or
16 absence of Aleksiewicz wouldn't have affected that
17 continuing position.

18 MR. CLARK: It would, your Honor, because
19 we assert clearly from the position of Aleksiewicz as
20 the lead pressman and the position of concededly
21 privileged position he often had in the company, he
22 could been seen as an influence and important rank and
23 file employee, an employee to whom other employees had
24 in the past and could continue in the future to look to
25 for leadership.

1 And on the basis of that --

2 JUDGE WELLES: What was the date of the
3 Board's decision?

4 MR. CLARK: June 6th, 1975.

5 JUDGE WELLES: But after that the company,
6 Mr. Gambella, did try to persuade Mr. Aleksiewicz to
7 stay on in the management post.

8 MR. CLARK: True.

9 JUDGE WELLES: And then acceded to his
10 request to put him back to pressman.

11 You do have the certification by then.

12 MR. CLARK: Yes, you do, but you don't
13 have -- but the Employer doesn't have any reason to
14 believe that Aleksiewicz is not going to continue in
15 his managerial orientation.

16 The employer has no reason, prior to
17 August, to believe that Aleksiewicz has anymore
18 interest in the union than he does in going flying.

19 The critical event, your Honor, is that --
20 or, events, are the discussions testified to and
21 corroborated in part -- testified to by Mr. Aleksiewicz
22 and corroborated in part by Mr. Claxton that during
23 August, unlike the prior months, Mr. Aleksiewicz
24 expressed renewed interest or continuing interest.

25 But from the employer's perspective, renewed

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1 two months' delay, we'll let the record speak for
2 itself.

3 Mr. Gambella testified that as soon as
4 he returned from Florida, he called.

5 I would point out to you, sir, that
6 most of the delay during that period arose from what
7 I would like to characterize as an honest misunderstanding.

8 Mr. Gambella thought that I was going to
9 be contacted by Mr. Casino.

10 Mr. Casino was of the impression that
11 Mr. Gambella was going to contact me.

12 Mr. Gambella was again away and only when
13 he returned, returned the call, and they cleared up
14 the misunderstanding and I was contacted, were we
15 able to resolve it.

16 Certainly in the over-all context of
17 these matters, your Honor, I don't think is justifiable
18 to infer an animus situation or evasion of delay from
19 the misunderstanding.

20 There was delay, but there wasn't that
21 much, in essence.

22 Now, as to the Aleksiewicz situation, it
23 breaks down to two aspects.

24 One, the animus question.

25 Here you have a man who was the union

1 observer in September -- first an overall situation.

2 We have a situation where the union won
3 by a sizable, I'd say 16 to 17 vote in a union of
4 23 people.

5 It's noteworthy that in 15 months later
6 we have but one complaint issued and it deals solely
7 with Aleksiewicz and solely with the situation that
8 occurred 11 months after the election.

9 It occurs to a man who within three
10 months after the election where he served as the
11 union observer, received a 15 dollar increase; within
12 four months after the election he was promoted to
13 management.

14 In the ensuing months, he was given the
15 opportunity to go back even though management wanted
16 him to stay as management, encouraged him, reassured
17 him, tried to convince him that that's where they
18 really needed him.

19 Mr. Aleksiewicz had things his way all
20 the time.

21 This is an indication of animus?

22 What further knowledge do you have on
23 that record?

24 At the extreme, you have a conversation,
25 according to Mr. Aleksiewicz, when he said that we

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)

Petitioner,)

v.)

No. 76-4251

DEVEN LITHOGRAPHERS, INC. AND)
CAVALIER MULTICOLOR CORP.,)

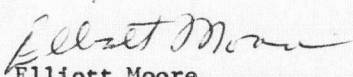
Respondent.)

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the Board's appendix in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

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NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 1st day of February, 1977.

